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A  
D I G E S T  
OR  
H I N D U L A W  
ON  
CONTRACTS AND SUCCESSIONS;

TRANSLATED FROM THE  
ORIGINAL SANSKRIT.

BY H. T. COLEBROOKE, ESQ.

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VOLUME THE FIRST

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CALCUTTA.

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M DCC XCVII

TO THE MEMORY OF

SIR WILLIAM JONES,

AN ACCOMPLISHED SCHOLAR,

INCORRUPTIBLE MAGISTRATE,

AND SINCERE PATRIOT;

THIS TRANSLATION

OF A

*D I G E S T*

COMPILED UNDER HIS SUPERINTENDENCE IS,

WITH GREAT VENERATION,

INSCRIBED BY

*THE TRANSLATOR.*



## THE PREFACE.

THE motives for undertaking the compilation of a new Digest of Indian Law are so well unfolded in a letter addressed by the late Sir WILLIAM JONES to the Supreme Council of Bengal, that it will suffice to extract therefrom the sentiments expressed by that venerable magistrate. It must ever be regretted, that the publick has lost by his premature death, a translation from his pen of a digest compiled under his direction, and an introductory discourse for which he had prepared curious and ample materials.\* The loss is irreparable; for no other joins to a competent knowledge of oriental languages that legislative spirit and intimate acquaintance with the principles of jurisprudence, which he possessed in so eminent a degree.

“ NOTHING,” says Sir WILLIAM JONES in the address alluded to, “ could be more obviously just than to determine private contests according to those laws, which the parties themselves had ever considered as the rules of their conduct and engagements in civil life; nor could any thing be wiser than, by a legislative act, to assure the *Hindu* and *Muselman* subjects of Great Britain, that the private

\* See his last Anniversary Discourse as President of the Asiatick Society, Vol. 4, p. 176.



“ laws, which they severally hold sacred, and a violation of  
 “ which they would have thought the most grievous oppres-  
 “ sion, should not be superseded by a new system of which  
 “ they could have no knowledge, and which they must have  
 “ considered as imposed on them by a spirit of rigour and in-  
 “ tolerance. So far the principle of decision between the  
 “ native parties in a cause appears perfectly clear ; but the  
 “ difficulty lies (as in most other cases) in the application of  
 “ the principle to practice ; for the *Hindu* and *Muselman* laws  
 “ are locked up for the most part in two very difficult lan-  
 “ guages, Sanscrit and Arabick, which few Europeans will  
 “ ever learn, because neither of them leads to any advantage  
 “ in worldly pursuits ; and if we give judgment only from the  
 “ opinions of the native lawyers and scholars, we can ne-  
 “ ver be sure that we have not been deceived by them. It  
 “ would be absurd and unjust to pass an indiscriminate  
 “ censure on a considerable body of men ; but my ex-  
 “ perience justifies me in declaring, that I could not with an  
 “ easy conscience concur in a decision, merely on the written  
 “ opinion of native lawyers, in any cause in which they could  
 “ have the remotest interest in misleading the court : nor,  
 “ how vigilant soever we might be, would it be very diffi-  
 “ cult for them to mislead us ; for a single obscure text, ex-  
 “ plained by themselves, might be quoted as express autho-  
 “ rity, though perhaps in the very book from which it was  
 “ selected, it might be differently explained, or introduced  
 “ only for the purpose of being exploded. The obvious  
 “ remedy for this evil had occurred to me before I left  
 “ England, where I had communicated my sentiments to  
 “ some friends in Parliament and on the bench in West-  
 “ minster Hall, of whose discernment I had the highest opi-  
 “ nion ; and those sentiments I propose to unfold in this let-  
 “ ter with as much brevity as the magnitude of the subject  
 “ will admit. If we had a complete digest of *Hindu* and  
 “ *Muhammedan* Laws, after the model of JUSTINIAN’S inesti-  
 “ mable

“ mable pandects, compiled by the most learned of the na-  
 “ tive lawyers with an accurate verbal translation of it into  
 “ English, and if copies of the work were repositied in the  
 “ proper offices of the *Sedr Diwáni Adálat*, and of the Su-  
 “ preme Court, that they might occasionally be consulted as  
 “ a standard of justice, we should rarely be at a loss for prin-  
 “ ciples at least and rules of law applicable to the cases be-  
 “ fore us, and should never perhaps be led astray by the *Pan-*  
 “ *dits* or *Maulavis*, who would hardly venture to impose on  
 “ us, when their imposition might so easily be detected. The  
 “ great work, of which JUSTINIAN has the credit, consists  
 “ of texts collected from law books of approved authority  
 “ which in his time were extant at Rome; and those texts  
 “ are digested according to a scientific analysis; the names  
 “ of the original authors and the titles of their several books,  
 “ being constantly cited with references even to the parts of  
 “ their works, from which the different passages were select-  
 “ ed; but although it comprehends the whole system of ju-  
 “ risprudence, publick, private and criminal, yet that vast  
 “ compilation was finished, we are told, in three years: it  
 “ bears marks unquestionably of great precipitation, and of  
 “ a desire to gratify the Emperor by quickness of dispatch;  
 “ but with all its imperfections it is a most valuable mine of  
 “ juridical knowledge. It gives law at this hour to the great-  
 “ est part of Europe; and, though few English lawyers dare  
 “ make such an acknowledgment, it is the true source of  
 “ nearly all our English laws, that are not of a feudal ori-  
 “ gin. It would not be unworthy of a British government  
 “ to give the natives of these Indian provinces a permanent  
 “ security for the due administration of justice among them,  
 “ similar to that which JUSTINIAN gave to his Greek and  
 “ Roman subjects; but our compilation would require far  
 “ less labour and might be completed with far greater exact-  
 “ ness in as short a time; since it would be confined to the  
 “ laws of contracts and inheritances which are of the most  
 extensive

“ extensive use in private life, and to which the legislature  
 “ has limited the decisions of the Supreme Court in causes  
 “ between native parties: the labour of the work would also  
 “ be greatly diminished by two compilations already made  
 “ in Sanscrit and Arabick, which approach nearly in merit  
 “ and in method, to the digest of JUSTINIAN. The first was  
 “ composed a few centuries ago by a *Brâhmen* of this pro-  
 “ vince, named RAGHUNANDANA and is comprized in twenty  
 “ seven books at least, on every branch of *Hindu* law: the  
 “ second, which the Arabs call the Indian decisions, is known  
 “ here by the title of *Fetâwî Adlemgiri*, and was compiled, by  
 “ the order of AURANGZIB, in five large volumes, of which  
 “ I possess a perfect and well collated copy. To translate  
 “ these immense works would be superfluous labour; but  
 “ they will greatly facilitate the compilation of a digest on  
 “ the laws of inheritance and contracts; and the code, as it  
 “ is called, of *Hindu* law which was compiled at the request  
 “ of Mr. HASTINGS, will be useful for the same purpose,  
 “ though it by no means obviates the difficulties before stated,  
 “ nor supersedes the necessity, or the expedience at least, of  
 “ a more ample repository of *Hindu* laws, especially on the  
 “ twelve different contracts, to which ULPIAN has given spe-  
 “ cific names; and on all the others, which, though not speci-  
 “ fically named, are reducible to four general heads. The last  
 “ mentioned work is entitl'd *Vivâdârnava Sétu*, and consists,  
 “ like the Roman digest, of authentick texts with the names  
 “ of their several authors regularly prefixed to them and ex-  
 “ plained, where an explanation is requisite, in short notes ta-  
 “ ken from commentaries of high authority: it is as far as it  
 “ goes a very excellent work; but though it appear extreme-  
 “ ly diffuse on subjects rather curious than useful, and though  
 “ the chapter on inheritances be copious and exact, yet the  
 “ other important branch of jurisprudence, the law of con-  
 “ tracts, is very succinctly and superficially discussed and  
 “ bears an inconsiderable proportion to the rest of the work.

“ But

“ But whatever be the merit of the original, the translation of  
 “ it has no authority, and is of no other use then to suggest  
 “ inquiries on the many dark passages, which we find in it :  
 “ properly speaking, indeed, we cannot call it a translation ;  
 “ for though Mr. HALHED performed his part with fidelity,  
 “ yet the Persian interpreter had supplied him only with a  
 “ loose injudicious epitome of the original *Sanfcrif*.  
 “ in which abstract many essential passages are omitted,  
 “ though several notes of little consequence are interpolated  
 “ from a vain idea of elucidating or improving the text.” \*

BESIDES the great work of RAGHUNANDANA abovementioned, many other digests have been compiled by *Hindû* lawyers ; which, like his, consist of texts collected from the institutes attributed to ancient legislators, with a gloss explanatory of the sense and reconciling seeming contradictions, to fulfil the precept of their great lawgiver, “ when there are  
 “ two sacred texts apparently inconsistent, both are held to  
 “ be law ; for both are pronounced by the wise to be valid  
 “ and reconcileable.” † From various digests, and from commentaries on the institutes of law, the present digest has been compiled ; and the venerable author, JAGANNA'T'HA, has added a copious commentary, sometimes indeed pursuing frivolous disquisitions, but always fully explaining the various interpretations, of which the text is susceptible. In restricting this compilation to the law of contracts and successions, he has omitted the law of evidence, the rules of pleading, the rights of landlord and tenant, the decision of questions respecting boundaries, with some other topics, which

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\* The letter, from which this extract is taken, is dated 19th March 1788 On the same date the then Governor General, MARQUIS CORNWALLIS, with the concurrence of the Members of Council, accepted the offer in terms honourable to the proposer and expressive of the most liberal sentiments “ The object of your proposition,” they say, “ being to promote a due administration of justice, it becomes interesting to humanity, and it is deserving of our peculiar attention, “ as being intended to increase and secure the happiness of the numerous subjects of the Company’s provinces.”

† MENU, Chapter II, v. 41.

should be likewise treated for the purpose of assisting courts of civil judicature in deciding private contests according to the laws, which the *Hindu* subjects of Great Britain hold sacred. The body of Indian law comprises a system of duties religious and civil. Separating the topick of religious duties, and omitting ethical subjects, *Hindu* lawyers have considered civil duties under the distinct heads of private contests and forensick practice; the first comprehends law private and criminal; the last includes the forms of judicial procedure, rules of pleading, law of evidence written and oral, adverse titles, oaths, and ordeal. The translation of *MENU* has sufficiently made known the criminal law of the *Hindus*, which is now superseded by the *Muhammedan* system: but another head of private contests, in which, under the name of disputes concerning boundaries, the rights of husbandmen are examined, contains matter both curious and useful; practical law, especially the system of evidence, must be sometimes consulted in the provincial courts, which are not governed by English law; and the rules of special pleading have been pronounced excellent by one, whose opinion has great weight.\*

THE *Dharma Śāstra*, or sacred code of law, comprising all the subjects abovementioned, is called *Smṛiti*, what was remembered, in contradistinction to *Śruti*, what was heard. By these names it is signified, that the *Vēda* has preserved the words of revelation, while the system of law records the sense expressed in other words. It has been promulgated by thirty six ancient sages, who are named in three verses of the *Padma purāna*; *YAJÑAWALKYA* however, mentions no more than twenty: on the other hand sages are cited in law tracts, whose names do not appear in either list. Treatises, attributed to these ancient philosophers, are extant, which internal evidence proves to be ancient, though probably composed

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\* See WILLIAM JONES, in a manuscript note.

by other persons, as the *Puránas*, written by many different authors, are all ascribed to VYA'SA; for the dramatic form, which has been given to most of those tracts, and the use of the third person, when the reputed author is named in his code, extort a confession from commentators, that the institutes must have been composed by pupils from the recollection of precepts delivered by their holy instructor. Without examining whether the authenticity of codes now extant be thus sufficiently established, the *Hindus* revere those institutes as containing a system of sacred law confirmed by the *Véda* itself in a text thus translated by Sir WILLIAM JONES according to the gloss of SANCARA; "GOD, having created the four classes, had not yet completed his work; but in addition to it, lest the royal and military class should become insupportable through their power and ferocity, he produced the transcendent body of law; since law is the king of kings, far more powerful and rigid than they: nothing can be mightier than law, by whose aid, as by that of the highest monarch, even the weak may prevail over the strong."

CONCERNING the birth and actions of the legislators we know little more than what is recorded in the *Puránas*; and the whole of what is there recorded, belongs either to heroick history or to mythology. Such topicks would be here misplaced: but a short notice of the institutes, commentaries, and digests, which have been used by the compiler, may be fitly subjoined to introduce to the reader's acquaintance the authorities cited in the work.

THE laws of MENU, who is revered by *Hindus* as the first of legislators, have already appeared in the English language. Among the numerous commentators on his institutes, the most esteemed have been noticed in the preface to the translation of his work; namely a commentary by ME'D'HÁ'TIT'HI son of BÍRASWA'MI BHAT'TÁ, which, having been partly lost, has

has been completed by other hands at the court of MADANA PA'LA, a prince of *Dig'h*; another commentary by G'OVINDA RA'JA; a third by D'HARANID'HERA; and the celebrated gloss of CULLÚ'CA BHATTA. The commentary called *Men-wart'ha Muñtávali* and some others are occasionally quoted in this digest.

ATRI, not named among legislators in the *Padma purána*, is second in the list of YA'JNYAWALCYA: he is one of the ten Lords of created beings,\* and father of DATTATREYA, DURVA'SAS and SO'MA: a perspicuous treatise in verse, attributed to him, is extant. VISHN'U, not the Indian divinity, but an ancient philosopher who bore this name, is reputed author of an excellent law treatise in verse; and HÁ-RÍTA is cited as the author of a treatise in prose: metrical abridgements of both works are also extant.

YA'JNYAWALCYA, grandson of VISWA'MITRA, is described in the introduction of his own institutes as delivering his precepts to an audience of ancient philosophers assembled in the province of *Mit'ílá*. These institutes have been arranged in three chapters containing one thousand and twenty three couplets. An excellent commentary, entitled *Mitácshará*, was composed by VIJNYANE'S'WARA, a hermit, who cites other legislators in the progress of his work, and expounds their texts as well as those of his author, thus composing a treatise, which may supply the place of a regular digest: it is so used in the province of *Benares*, where it is preferred to other law tracts; but some of his opinions have been successfully controverted by late writers. Following the arrangement of his author, he has divided his work into three parts: the first treats of duties; the second, of private contests and administrative law: the third, of purification, the orders of devotion, penance and so forth. Another com-

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\* *Manu*, Chapter I, v. 35

mentary on YA'JNYAWALCYA by DE'VABO'D'HA, and one by VISWARUPA, are occasionally cited. The *Dīpācalicā* by Ś'U-LAPĀ'NĪ, which is likewise a commentary on YA'JNYAWALCYA, is in deserved repute with the *Gaurīya* school.

UŚ'ANAS is another name of SUCRA, the regent of the planet Venus: he was grandson of BHRĪGU: his institutes in verse, with an abridgement, are extant; as is a short treatise containing about seventy couplets ascribed to ANGIRAS, who holds a place among the ten lords of created beings, and according to the *Bhāgavata* became father of UTAT'HYA and of VRĪHASPATI in the reign of the second MENU. A short tract containing a hundred couplets is attributed to YAMA, brother of the seventh MENU and ruler of the world below: CULLÚCA BHAT'TA wrote a gloss on his institutes. APAS-TAMBA was author of a work in prose, which is extant with an abridgement in verse: but the metrical abridgement only of the institutes of SAMVERTA is among the tracts which were collected for the present compilation. CATYA'YANA is author of a clear and full treatise on law, and also wrote on grammar and on other subjects. VRĪHASPATI, regent of the planet Jupiter, has a place among legislators; he was son of ANGIRAS according to one legend, but son of DE'VALA according to another: the abridgement of his institutes, if not the code at large, is extant. PARA'SARA, grandson of VA-SISHT'HA, is termed the highest authority for the fourth age: a work attributed to him is extant, with a commentary by MA'DHAVĀ'CHĀ'RYA. VYĀ'SA, son of PARA'SARA is reputed author of the *Purānas*, which, with some works more immediately connected with law, are often cited in his name. SANC'HA and LIC'HITA are the authors of a joint work in prose, which has been abridged in verse: their separate tracts in verse are also extant. Heroick history notices two personages of the name of DACSHA; one son of BRAHMA, the other son of PRACHĒTAS: a similar legend on the marriage of  
d  
their



their daughters, and which is evidently allegorical, is told of both: it does not appear certain which of them is the legislator; however, a law treatise in verse is dignified with this name. GAUTAMA, son of the celebrated founder of a rational system of metaphysics and logic, is named in every list of legislators, although texts are cited in the name of his father GO'TAMA, the son of URAT'HYA: an elegant treatise in prose is ascribed to GAUTAMA. SÁ'TÁTAPA is author of a treatise on penance and expiation, of which an abridgement in verse is extant. VASISHT'HA, the preceptor of the inferior gods, and one of the lords of created beings, is the last of twenty legislators named by YAJNYAWALKYA: his elegant work in prose mixed with verse is extant.

IN the *Padma purāna* the number of thirty six legislators is completed by the following names; MARÍCHI, the father of CAS'YAPA; PULASTYA, father of AGASTYA; PRACHE'TAS, son of PRA'CHÍNAVARHISHA by a daughter of the ocean, and father of DACSHA; BHRÍGU, son of MENU; NAREDA, begotten by BRAHMA', and again by CAS'YAPA, on the wife of DACSHA; CAS'YAPA, son of MARÍCHI; VISWA'MITRA, a sage among military men, who became a *Bráhmāna* through his devotion; DÉVALA, son of VISWA'MITRA, and grandfather of the celebrated grammarian PA'NINI, but according to another legend great grandson of DACSHA; RĪSHYAŚRĪNGA, son of VIBHANDACA by a miraculous birth from a doe; GÁRGYA the astronomer; BAUD'HÁYANA, who is frequently cited by lawyers; PAIT'HÍNASI, who is also cited in this digest; JÁBÁLI, SUMANTU, PARA'SCARA, LO'CA'CSHI and CUT'HUMI, whose names rarely occur in any compilation of law.

BESIDES these legislators, DHAUMYA, the priest of the *Pándavas* and author of a commentary on the *Yajurvéda*, A'S'WALA'YANA, who wrote on the detail of religious acts and ceremonies,

monies, and DATTA, the son of ATRI, are cited in this compilation; and BHĀGURI is quoted for a gloss on the institutes of MENU.

THE *Rámáyana* of VĀLMICI, the earliest epick poem, is cited as nearly equal in authority with the poems on mythology and heroick history, which are ascribed to VYA'SA. For the purpose of elucidation the compiler sometimes quotes metaphysical rules, and ethical maxims; and with particular veneration, the sublime works of UDAYANA'CHĀRYA; the reviver of the rational system of philosophy. For the same purpose he has made some use of the dramas and epick poem of CĀLIDA'SA, and lyrick poetry of JAYADE'VA. The treatises and commentaries of lawyers, which have been consulted by the compiler, are numerous.

THE *Ch'handóga paríśhṭa* by CE'SAVA MIS'RA a celebrated philosopher, and its commentary named *Paríśhṭa pracáśa*, are works of great authority; they treat of the duties of priests, especially those who are guided in their religious ceremonies by the *Sámaveda*. A more general treatise entitled *Dwaita paríśhṭa* is the work of the same author, a native of Mithilá. The *Viváda Retnácara*, a digest highly esteemed by the lawyers of Mithilá or Tirabhudi, was compiled under the superintendence of CHAN'DÉ'S'WARA, minister of HARASINHA DÉ'VA king of Mithilá. CHAN'DÉ'S'WARA is reputed author of other tracts. The *Viváda Chintámeni*, *Vyavahára Chintámeni*, and other works of VĀCHESPATI MISRA, are also in high repute among the lawyers of Mithilá. No more than ten or twelve generations have past since he flourished at Semaul in Tirhut. The *Viváda Chandra* and other works composed by LAC'HIMA DÉ'VI are likewise much respected in the Maithila school. This learned female set the name of her nephew MISARU MISRA to all her compositions on law and philosophy, and took the titles of her work from the then reigning prince

CHAN-

CHANDRASINHA grandson of HARASINHA DE'VA. The *Viváda Chandra* is never cited by name in the new digest; although it has been frequently copied in the anonymous commentary.

THE *Vyavahára-tatwa*, *Dáyatatwa*, and other works of RAGHUNANDANA *Bandyaghatíya* are highly respected by the *Gauriya* school. This great lawyer is frequently cited by the title of *Smárta-bha't'áchárya*, as VACHESPATI MISRA is distinguished by his family name of MISRA. The *Dwaita nirnaya* of VACHESPATI BHAT'T'ÁCHÁRYA, a treatise on questions of law, is often quoted by the compiler of the new digest, who has only once named him: in every other instance he cites him by the appellation of "my venerable grandfather." In allusion to the similarity of their names, this lawyer adopted a title for his work from a similar treatise by VACHESPATI MISRA. The compiler of the new digest also quotes his maternal grandfather's brother by the appellation of "modern VACHESPATI."

JÍMUTA VÁHANA, who gave his name to a digest entitled *Dharma retna*, is said to have reigned on the throne of SÁLIVÁHANA. He is probably the same with the son of JÍMUTA CÉTU, a prince of the race of *Sílara*, who reigned at *Tagara*. \* The chapter on inheritance is extant, with a commentary by S'RÍ CRÍSHNÁ TFRCA'LANCA'RA, a modern writer of no great authority, who belongs to the *Gauriya* school and is often cited.

HELA'YUD'HA, the spiritual adviser of LACSHMANA SE'NA (a renowned monarch, who gave his name to an era of which six hundred and ninety two years are expired), is the author of the *Nyáyá servaswa*, *Bráhmána servaswa*, *Pandita servaswa*, and many other tracts on the administration of justice and on the duties of classes and professions. He was

son of D'HANANJAYA the celebrated lexicographer; and his brothers PASUPATI and ISÁNA are authors of rituals, the first for obsequies &c, the second for daily acts of religion.

LACSHMID'HARA composed a treatise on administrative justice by command of GOVINDA CHANDRA a king of *Cáśi*, sprung from the *Vaślava* race of *Cayast'has*. He is likewise author of a digest entitled *Calpateru*, which is often cited. By command of the same prince, NARASINHA, son of RAMACHANDRA the grammarian and philosopher, composed a law-tract entitled *Govindarnava*, and several other treatises.

SRI CARACHARYA and his son SRINÁT'HA'CHARYA CHURAMENI were both celebrated lawyers of the *Mait'hila* school. The first wrote a treatise on inheritances, the last is author of a tract on the duties of the fourth class, which is entitled *Acharya chandrica*. I have not seen the other works of these authors.

THE *Smrítisara*, or at full length *Smrítíyart'hasara*, by SRID'HARACHARYA a priest of the *Dravir* tribe, is a treatise on religious duties, in which questions of civil duty are incidentally introduced. He cites the *Camad'henu* a law tract said to be a gloss on MENU, but which, not having seen the book, I cannot affirm. The *Pradipa*, *Calpadruma* and *Calpalata*, works of which I can give no other notices, are cited in the *Smrítisara*.

THE *Madana paryata*, on civil duties, is the work of VISWESWARABHATTA and derives its name from MADANA PALA, a prince of the *Jat* race, who reigned at *Casht'hanagar* or *Digh*. This work, which is sometimes quoted in the name of MADANA PALA himself, cites among other authorities the *Sápararca* and *Smritichandrica*, which do not appear to be otherwise known, and the *Hemadri*, which is occasionally quoted in the new digest.

S'ULAPA'N'I, a native of *Mit'hilá*, who resided at *Sahurā* in Bengal, wrote a treatise on penance and expiation, which is in great repute with both schools. His commentary on YA'JNYAWALCYA, entitled *Dípacalcá*, has been already noticed. BHAVADEV'VA BHAT'TA, also called BALABALABHI BHUJANGA, was author of several treatises on religious duties. These, with the rituals of the same author, are much consulted in Bengal and in the southern provinces of India. JITE'NDRIYA is often cited in the *Mitácshará*, and sometimes in the new digest. GO'YÍCHANDRA, GRAHE'S'WARA, D'HÁ'RE'SWARA, BALLARÚPA, HARIHARA, MURA'RÍ MISRA and many others have been occasionally consulted.

AMONG modern digests the most remarkable are the *Vivádárnavá sétu* compiled by order of Mr. HASTINGS; the *Viváda sárárnava* compiled, at the request of Sir WILLIAM JONES, by SERVÓRU TRIVÉDÍ a lawyer of *Mit'hilá*; and the *Viváda bhangárnava* by JAGANNA'T'HA, which is now translated.

ON this translation I shall briefly observe, that the version of many texts come from the pen of Sir WILLIAM JONES; for most of the laws quoted from MENU are found in his translation of the *Mánava d'herma sástrá*, and other texts had been already translated by him when perusing the original digest formerly compiled by order of Mr. HASTINGS. It has become my part to complete a translation of the new digest of *Indian law*. Selected for this duty by Sir JOHN SHORE, whose attention extended to promote the happiness of the native inhabitants of the provinces which he governs, and to encourage the labours of the literary society over which he presides, is no less conspicuous than his successful administration of the British interests in India, I have cheerfully devoted my utmost endeavours to deserve the choice, by which I was honoured: nothing, which diligence could effect, has been

been omitted to render the translation scrupulously faithful; and to this it has been frequently necessary to sacrifice perspicuous diction. The reader, while he censures this and other defects of a work executed in the midst of official avocations, will candidly consider the obvious difficulties of the undertaking. Should it appear to him, that much of the commentary might have been omitted without injury to the context, or that a better arrangement would have rendered the whole more perspicuous, he will remember, that the translator could use no freedom with the text but undertook a verbal translation of it; what has been inserted to make this intelligible, is distinguished by italicks, as was practised by Sir WILLIAM JONES in his version of MENU and of the *Sirājyyah*: in very few instances has any greater liberty been taken, except grammatical explanations and etymologies, which are sometimes though rarely omitted, or abridged, where a literal version would have been wholly unintelligible to the English reader. In the orthography of *Sanſcrit* words, the system adopted by Sir WILLIAM JONES has been followed. To obviate the necessity of referring to the first volume of the Asiatick Researches, where that system was proposed, an explanatory note is subjoined. This, with an index, and a few scattered annotations, which have been added, may prove sufficient to assist the occasional perusal of a work intended to disseminate a knowledge of Indian law, and, serving as a standard for the administration of justice among the *Hindu* subjects of *Great Britain*, to advance the happiness of a numerous people.

H. T. COLEBROOKE.

MIRZAPOOR,

17th December, 1756.

N O T E  
ON THE ORTHOGRAPHY OF  
S A N S C R I T W O R D S.

TO obviate the necessity of a reference to the first volume of the Asiatick Researches where the system of orthography, which is here followed, was first proposed, I subjoin the pronunciation of the letters.

A, E: pronounced, as *u* in *fun*, as *i* in *sir*, as *e* in *ber*. When final it has a very obscure sound like the *e muet* of the French. The Bengalese pronounce this letter as a short *o*.

ʼA: as *a* in *call*.

I as *i* in *fit*.

ʼI: as *i* in *machine*, and as *ee* in *see*.

U: as *u* in *pull*.

U': as *oo* in *pool*.

Rĩ. nearly as *ri* in *trip*: more exactly as *ri* in *merrily*.

Rĩ. nearly as *ree* in *tree*.

Lrĩ. nearly as *try* in *revelry*. In Bengal this letter expresses both syllables of the word *lily*.

Lrĩ: the same prolonged.

E. as the first *e* in *there*, and as *ei* in *Leir*.

O' as *o* in *go*.

Aĩ: as *i* in *flee*. In Bengal it is pronounced like the Greek diphthong in *ποιμήν*, a shepherd.

Au: as *ea* in *thea*.

N & M represent the nasal semivowel, which is an abbreviation of the nasal consonants at the end of a syllable; sometimes pronounced gutturally, sometimes labially. Its sounds are familiar to the French tongue.

H: represents the aspirate semivowel, an abbreviation or substitute, at the close of a syllable, for the strong aspirate. It gives intensity to the sound of the preceding vowel. The short vowels *a* and *i* and sometimes *u*, when final, are scarcely perceptible unless followed by this element.

C: as *c* in *cause*, and as *k* in *kill* and *ken*. Used before *e* and *i*, it has not the sound of *s* but of *k*.

C'h: nearly as *ch* in *choler*, *chitromancy* &c. *Cackxy* perhaps furnishes a better example of this sound.

G: as *g* in *gain*.

G'h: nearly as *g-b* in *log-house*.

Ṅ: as *ng* in *sing*. It has the sound, which we also give to nasals preceding guttural letters, as *ink*, *bank* &c.

Ch: as *ch* in *church*.

Ch'h: nearly as *ch-b* in *much harm*; *rich heir* &c. if no pause be made in pronouncing these words.

J: as *j* in *joy*.

J'h: nearly as *dge-b* in *Edge-bill*.

Ny: a peculiar nasal, pronounced before vowels nearly as *ni* in *pannier* or in *onion*. Before a consonant it varies little from the sound of the nasal in *singe*. I therefore write it in such instances with a single N. The conjunct *ny* is pronounced in the eastern provinces as *gy* or as *g*.

T', T'h, D', D'h: the sounds of these cerebral letters can only be learned by practice; they are often confounded in pronunciation with a harsh *r*, or with an *l*.

N': a peculiar nasal sounded high in the roof of the mouth.

T: as *t* in *tin* and *ten*.

T'h: nearly as *t-b* in *Lit birr*, *abite ball* &c.

D: as *d* in *deal*.

D'h: nearly as *d-b* in *red hair*.

N: as *n* in *noble*.

P: as *p* in *pen*.

P'h: sometimes pronounced as *pb* in *philantropy*; more generally as in *shepherd*, *Lafazard* &c.



B : as *b* in *bell*.

B<sup>h</sup> . as *b-b* in *abhor*.

M . as *m* in *man*.

Y : as *y* in *yet* ; in the eastern provinces it is pronounced as *j*.

R : as *r* in *run*.

L : as *l* in *lull*.

V, W : as *v* in *valve* ; sometimes as *w* in *wind*. In the eastern provinces it is confounded with *b*.

S' : a peculiar sibillant, differing from our *s* which is dental, as it is sounded higher on the palate. It is sometimes pronounced like *sb*.

Sh . as *sb* in *ship*, but often pronounced as *c'b* or rather as the Greek *z*.

S : as *s* in *sin*.

H : the strong breathing, or aspirate ; as *b* in *hair*. The conjunct *hy* is pronounced in the eastern provinces like *by* confounded by the ear with *sj* or *zy*. I cannot well mark this peculiar sound.

Csh : a compound letter pronounced as *Et* in *fiction*, but by some it is sounded like *cb*, by others like *c'b*.

# CONTENTS.

## VOLUME THE FIRST.

### PART I. CONTRACTS.

#### BOOK I. *\*On loans and payment.*

##### CHAPTER I. ON LOANS.

Page.

SECTION I. On loans in general. Topicks comprised in this title.

Loan defined. Moneylending practised by the commercial class. A part only of a man's property should be adventured. In distress any class may practise usury. - - - - - 5

SECTION II. On the same, and on the form of the contract,——ARTICLE I.

On improper loans. Nothing should be lent to women, slaves, or minors: but a loan for necessary support may be recovered. A loan should not be made to one, from whom payment cannot be enforced. - - - - - 16

ARTICLE II. On the form of the contract. Security or attestation required. Written contracts are either attested or unattested. Three witnesses are generally required. A bonâ fide deed in the handwriting of the party is good evidence. Form of a deed: its subscription, date &c. A pledge and surety give confidence; a writing and attestation afford proof. - - - - - 19

\* The original work is divided into Books and Chapters denominated *d-ufat* and *ratnas*, islands and gems, in allusion to the title of the book. The chapters (*ratnas*) are generally subdivided; sometimes, however, two or more chapters belong to the same subject. I have taken no other freedom with the arrangement, than naming these *ratnas*, either chapters or sections, according as the subject required. By this alteration nine *ratnas* of the first book are reduced to six chapters. The four last *ratnas* being chapters, whilst the first five are sections, which I have placed in two chapters.

## CHAPTER II. ON INTEREST.

Page.

- SECTION I. On interest in general. Legal interest on loans secured by a pledge. Interest is computed by vulgar time. Interest on loans with or without a surety. Rates of interest vary with the classes and with the risk, time, place and circumstances. - - 29
- SECTION II. On special forms of interest. Six sorts of interest; but fewer according to some. Limitation of various sorts of interest. Usurious interest invalid. Interest varies by the custom of the country. I. Exposition of the texts according to the *Mitācśārā*. II. According to CHANDĒ'SWARA. III. According to MISRA. IV. According to 'SU' LAPANI. V. According to CULLU' CABHATTA. VI. According to other commentators. VII. Recapitulation. VIII. Assignment of bonds. IX. Usage in general. - - 50
- SECTION III. On interest specially authorized and specially prohibited.—ARTICLE I. On debts bearing interest without a special agreement. If payment be not made on demand, interest accrues after three months, six months, or a year, according to the circumstances of dishonesty &c. No interest without a demand. - 93
- ARTICLE II. On the limits of interest. The principal can in general be only doubled. Other limits on loans of grain &c. - 110
- ARTICLE III. On debts bearing no interest. Commodities sold &c. bear no interest without a special agreement.—No interest on a sum due by a surety; nor on a debt of which payment has been tendered. - - - - 127

## CHAPTER III. ON PLEDGES.

- SECTION I. On pledges lost or damaged. Distinction of pledges. Interest forfeited by neglect of a pledge: the loss must be made good, or the principal is forfeited. Penalty for the abuse of a pledge. If the loss be casual, another pledge must be given. - - - 145
- SECTION II. On the redemption of pledges. They need not be released without full payment of the debt. But they must be released on tender of payment. Penalty for refusing it. Case of an absent creditor. A mortgage remains to the close of its term. Employment of a pledge unredeemed at its term. Forms of hypothecation. Forfeiture

feiture of a pledge not redeemed. Equity of redemption. The assignment of the pledge to another person is forbidden. Publick sale of a pledge unredeemed. A pledge of conscience. - - - 171

SECTION III. On the validity of hypothecation: it is valid by occupancy, not by a written contract alone without possession. The first of two mortgages is valid. Punishment of a fraudulent mortgager. If priority be not ascertained, the earliest possessor retains the pledge. In the case of equal claims, the pledge is shared. Written evidence prevails over oral testimony. The most definite contract prevails. Indefinite pledges explained. Penalty for encroachments. Further remarks on pledges. - - - 211

CHAPTER IV. ON SURETIES.—Who should not be accepted as sureties. Near relations cannot become sureties for each other, until after partition. Various sorts of sureties. Sons of certain sureties are not amenable. Sureties liable on failure of their engagements. Time and indulgence allowed to them. The son of a surety for payment is amenable; and the sons of other sureties if indemnified. Payment by sureties jointly and severally bound. The son of a surety is not liable for interest. The grandson is not amenable. Redress of a surety against the debtor. - - - 233

CHAPTER V. ON THE PAYMENT OF DEBTS.—When and by whom debts should be paid. Order of payment. A son must pay the debt with interest; a grandson without interest; a great grandson need not pay it. It must be paid by a son after the death of his father, natural or civil; and after his long absence. But he, who holds assets is first liable. After him, the son; or the guardian of the widow. In case of absence, the lapse of twenty years is required; unless the debtor be presumed dead. Distinction of sons before and after partition. Payment of debts contracted by coparceners, and by persons jointly and severally bound. Payment of debts borrowed for the behoof of the family, or on a credit given. The debts must in all cases be proved. Certain debts not recoverable from a son. Husband and wife, mother and son, not liable for the debts of each other;

other ; except in certain cases. The paramour of an adulteress is liable for the debts of her husband. Payment to the heir of a deceased creditor. - - - - -

271

CHAPTER VI. ON REDRESS FOR NONPAYMENT.—Compulsory means of recovery ratified. Various modes of recovery. Treatment of a prisoner. Labour exacted from an insolvent debtor for the discharge of his debt : penalty for imposing an improper task. Punishment of a fraudulent debtor. Renewal of the contract in case of nonpayment. A contested debt must be proved. Fine for enforcing payment of a doubtful demand. Penalties on parties cast in court. Preference of creditors according to class, priority &c. Acquittance granted after payment. Authentication of partial payments. Penalty for refusing to grant a receipt. Means of proof in contested cases. Duplicates of unavailable documents. - - -

345

## VOLUME THE SECOND.

*BOOK II. On deposits, sale without ownership, concerns among partners, and subtraction of what has been given.*

CHAPTER I. ON DEPOSITS AND OTHER BAILMENTS.

SECTION I. On the several sorts of bailment, open, under seal, secret, mutual, for delivery, for use, for manufacture; and other trusts, to which the same laws are applicable. The restoration of a deposit whether attested or unattested, to the party himself, or to his heir after his death ; but not to his heir in his life time without his assent. The obligation of carefully guarding a deposit, and crime of neglecting it. Lost by the fault of the depositary, it must be made good by him ; but not otherwise ; nor if the owner, warned of danger, persisted in placing it : he, by whose fault it is lost, must sustain the loss. - - -

1

SECTION

SECTION II. On the recovery of a deposit from a bailee withholding it, or the value with interest, if it have been abused or lost by his fault. In both cases fines to the king. A false claim also punished by fine. Embezzlement under false pretences punished by corporal pains. Loans for use restored when the purpose is accomplished, or earlier if the chattel be wanted by the owner Trial of contested bailment. A thing bailed with an artist must be made good by him, if lost or spoiled by his fault, or if lost by accident after the period agreed on, unless he had tendered it to the owner. - - 28

## CHAPTER II. ON SALE WITHOUT OWNERSHIP.

SECTION I On the avoidance of sale without ownership Digression on sale of joint property by any one parcener, of pledges by a creditor, of distrained property by the sovereign. Digression on property in the soil, and revenue of the sovereign. In a sale without ownership the contract is null; and the owner shall recover his chattel, the price shall be refunded to the buyer, and a fine be paid to the king, when the seller has been convicted Question on stolen goods - - - - - 53

SECTION II. On the justification of the buyer by producing the seller. Else he must restore the goods without recovering the price, unless the purchase was open and fair A purchase in open market justifies property, but a clandestine purchase is punishable as larceny. Fines on purchasers unable to justify the purchase, punishment of a seller offending wilfully, or inadvertently, punishment of a claimant failing in the proof of his case Suit between the claimant and seller, if found, between the claimant and buyer, if the seller be not found. Decision arbitrary when the proof is inadequate. The loss may be borne by both parties, if both or neither are in fault. Fraudulent purchase from the owner himself is criminal. Waifs, and unowned property. Fraudulent sales - - - 85

## CHAPTER III ON CONCERNS AMONG PARTNERS.

SECTION I On partnership in trade and adventure. The contributions and shares of partners regulated by their proportions of the capital

other ; except in certain cases. The paramour of an adulteress is liable for the debts of her husband. Payment to the heir of a deceased creditor. . . . .

271

CHAPTER VI. ON REDRESS FOR NONPAYMENT.—Compulsory means of recovery ratified. Various modes of recovery. Treatment of a prisoner. Labour exacted from an insolvent debtor for the discharge of his debt: penalty for imposing an improper task. Punishment of a fraudulent debtor. Renewal of the contract in case of nonpayment. A contested debt must be proved. Fine for enforcing payment of a doubtful demand. Penalties on parties cast in court. Preference of creditors according to class, priority &c. Acquittance granted after payment. Authentication of partial payments. Penalty for refusing to grant a receipt. Means of proof in contested cases. Duplicates of unavailable documents. - - -

345

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*BOOK II. On deposits, sale without ownership, concerns among partners, and subtraction of what has been given.*

### CHAPTER I. ON DEPOSITS AND OTHER BAILMENTS.

SECTION I. On the several sorts of bailment, open, under seal, secret, mutual, for delivery, for use, for manufacture; and other trusts, to which the same laws are applicable. The restoration of a deposit whether attested or unattested, to the party himself, or to his heir after his death ; but not to his heir in his life time without his assent. The obligation of carefully guarding a deposit, and crime of neglecting it. Lost by the fault of the depositary, it must be made good by him; but not otherwise; nor if the owner, warned of danger, persisted in placing it: he, by whose fault it is lost, must sustain the loss. - - -

I

SECTION

SECTION II. On the recovery of a deposit from a bailee withholding it, or the value with interest, if it have been abused or lost by his fault. In both cases fines to the king. A false claim also punished by fine. Embezzlement under false pretences punished by corporal pains. Loans for use restored when the purpose is accomplished, or earlier if the chattel be wanted by the owner. Trial of contested bailment. A thing bailed with an artist must be made good by him, if lost or spoiled by his fault, or if lost by accident after the period agreed on, unless he had tendered it to the owner. - - 28

## CHAPTER II. ON SALE WITHOUT OWNERSHIP.

SECTION I. On the avoidance of sale without ownership Digression on sale of joint property by any one parcener, of pledges by a creditor, of distrained property by the sovereign. Digression on property in the soil, and revenue of the sovereign. In a sale without ownership the contract is null; and the owner shall recover his chattel; the price shall be refunded to the buyer, and a fine be paid to the king, when the seller has been convicted Question on stolen goods. - - - - - 53

SECTION II. On the justification of the buyer by producing the seller. Else he must restore the goods without recovering the price, unless the purchase was open and fair. A purchase in open market justifies property, but a clandestine purchase is punishable as larceny. Fines on purchasers unable to justify the purchase, punishment of a seller offending wilfully, or inadvertently, punishment of a claimant failing in the proof of his case. Suit between the claimant and seller, if found, between the claimant and buyer, if the seller be not found. Decision arbitrary when the proof is inadequate. The loss may be borne by both parties, if both or neither are in fault. Fraudulent purchase from the owner himself is criminal. Waifs, and unowned property. Fraudulent sales. - - - 85

## CHAPTER III. ON CONCERNS AMONG PARTNERS.

SECTION I. On partnership in trade and adventure. The contributions and shares of partners regulated by their proportions of the capital



pital or by special agreement. Disputes among them may be arbitrated by the rest of the partners. An accusation of fraud tried by order. Accidental loss borne by all the partners. What is lost by the fault of one, must be made good by him. A partner claims a tenth part of property saved by him. A fraudulent partner expelled without profit. A substitute appointed to act for a disabled partner. Care of the effects belonging to a deceased trader. A proportion may be reserved by the king. If no heir appear, the king may take the escheat. - - - - -

117

SECTION II. On partnership among priests. Another must act for a priest disabled. Share of a priest who abandons work begun. Distribution of fees among priests. Rules concerning a priest, who absents himself. Fines for desertion of priests. Officiating priests are hereditary, appointed for that turn, or voluntary. Distribution of fees among partners. - - - - -

147

SECTION III. On partnership in moneylending. The act of one partner is the act of all. Penalty for refusing to join in the demand of money jointly lent. Partnership in agriculture. Partnership in manufacture, arts and so forth. Pay distributed according to the skill and rank of the artists. Partnership in plunder. Robbers restrained. The law of partnership extended to all cases. -

181

#### CHAPTER IV. ON SUBTRACTION OF GIFT.

SECTION I. On alienable property, one of four topics included in this title. Gifts for religious uses are irrevocable. Eight or more things are unalienable. Question on a donation by one of several coparceners: they may give or sell their own shares. A man may not give or sell his wife, son, or whole estate, without consent of parties. Digression on the gift of a son for adoption. Question on the alienation of the whole estate. Immovables and slaves attached to the glebe should not be aliened. Digression on succession of kings. An estate may be given away in distress. Question on a thing promised. - - - - -

209

SECTION II. On other topics included in this title —ARTICLE I  
On alienable property. Enough must be reserved for the support of the

the

the family. Modes of acquiring wealth, and modes of subsistence : distinctions in respect of these. Gift of property acquired by marriage &c. Digression on the foundation of law. Exclusive property of women. Gift of spoil, of joint property. Form of donation. Penalty of resumption. Reward of generosity. Question on a grant to a priest. Question on gifts to take effect at a future time. Penalty for a breach of promise : a promise is a debt of conscience : but it should not be fulfilled if made to an improper man, or if the consideration be withheld. - - - - - 246

ARTICLE II. On irrevocable gifts. Benefit of gifts. Acknowledgment to a benefactor. - - - - - 290

ARTICLE III On void gifts. The act of one disturbed in his mind is null. Gifts by minors, &c void. In distress a coparcener may alienate the whole estate. A wife, a son, and a slave have no exclusive property. Gifts by madmen and outcasts void, and gifts in sickness. Certain contracts are utterly null. Bribes shall be resumed. Revocable gifts. Reward of gifts. Gifts on illegal or mistaken considerations void. Unguarded words are vain. Punishment of illegal gifts. - - - - - 297

### *BOOK III. On the nonperformance of agreements, &c.*

#### CHAPTER I. ON THE NONPAYMENT OF WAGES OR HIRE.

SECTION I. On servants and others bound to obedience. The title three fold, definition of it. Five sorts of servants including slaves. Properly four servants, a pupil, apprentice, hired servant, and agent. Servants by class. Definition of pupil. He is bound to obedience. Litigation between him and his teacher, between husband and wife, father and son, master and servant, inadmissible. Chastisement of a wife, son, servant and pupil permitted : a preceptor punished for using an improper instrument of correction. The pupil must give his gains to his teacher, and promote his benefit. Who may be taught. Apprentice defined. A period should be fixed. Penalty for not instructing an apprentice. Idleness punished. He must fulfil his time, giving to the teacher the fruits of his art. Three hired servants. Servants for pay and for a share of profit. An agent

pital or by special agreement. Disputes among them may be arbitrated by the rest of the partners. An accusation of fraud tried by ordeal. Accidental loss borne by all the partners. What is lost by the fault of one, must be made good by him. A partner claims a tenth part of property saved by him. A fraudulent partner expelled without profit. A substitute appointed to act for a disabled partner. Care of the effects belonging to a deceased trader. A proportion may be reserved by the king. If no heir appear, the king may take the escheat. - - - - -

117

SECTION II On partnership among priests. Another must act for a priest disabled. Share of a priest who abandons work begun. Distribution of fees among priests. Rules concerning a priest, who absents himself. Fines for desertion of priests. Officiating priests are hereditary, appointed for their turn, or voluntary. Distribution of fees among partners. - - - - -

147

SECTION III. On partnership in moneylending. The act of one partner is the act of all. Penalty for refusing to join in the demand of money jointly lent. Partnership in agriculture. Partnership in manufacture, arts and so forth. Pay distributed according to the skill and rank of the artists. Partnership in plunder. Robbers restrained. The law of partnership extended to all cases. -

181

the family. Modes of acquiring wealth, and modes of subsistence : distinctions in respect of these. Gift of property acquired by mar- riage &c. Digression on the foundation of law. Exclusive proper- ty of women. Gift of spoil, of joint property. Form of donation. Penalty of resumption. Reward of generosity. Question on a grant to a priest. Question on gifts to take effect at a future time. Penalty for a breach of promise : a promise is a debt of conscience : but it should not be fulfilled if made to an improper man, or if the consideration be withheld.	- - - - -	246
ARTICLE II. On irrevocable gifts. Benefit of gifts. Acknowledg- ment to a benefactor.	- - - - -	290
ARTICLE III On void gifts. The act of one disturbed in his mind is null. Gifts by minors, &c void. In distress a coparcener may alienate the whole estate. A wife, a son, and a slave have no exclusive property. Gifts by madmen and outcasts void, and gifts in sickness. Certain contracts are utterly null. Bribes shall be resumed. Revo- cable gifts. Reward of gifts. Gifts on illegal or mistaken con- siderations void. Unguarded words are vain. Punishment of illegal gifts.	- - - - -	297

### *BOOK III. On the nonperformance of agreements, &c.*

#### CHAPTER I. ON THE NONPAYMENT OF WAGES OR HIRE.

SECTION I. On servants and others bound to obedience. The title  
three fold ; definition of it. Five sorts of servants including slaves.  
Properly four servants, a pupil, apprentice, hired servant, and agent.  
Servants by class. Definition of pupil. He is bound to obedience.  
Litigation between him and his teacher, between husband and wife,  
father and son, master and servant, inadmissible. Chastisement of a  
wife, son, servant and pupil permitted. a preceptor punished for  
using an improper instrument of correction. The pupil must give  
his guns to his teacher, and promote his benefit. Who may be  
taught. Apprentice defined. A period should be fixed. Penalty  
for not instructing an apprentice. Idleness punished. He must  
fulfil his time, giving to the teacher the fruits of his art. Three  
hired servants. Servants for pay and for a share of profit. An  
agent

agent or commissioned servant. Distinction of work. Impure work defined: it must be performed by slaves. Fifteen slaves. An apostate shall be enslaved. A slave for the sake of his bride. Servitude for the discharge of a fine. - - - - -

319

SECTION II. On emancipation from slavery.—ARTICLE I. On enfranchisement of slaves. Five slaves can only be emancipated by the act of their masters. A *Súdra*, though emancipated, is still bound to servitude. A soldier or a merchant should be supported in distress and employed in the business of his profession: but any *Súdra* may be employed in servile offices. A slave self-given may be reclaimed. Slavery by purchase from a robber, or by force, is null. A slave, saving his master's life, shall be emancipated and rewarded. Emancipation of one maintained in a famine, and of certain other slaves. A pledged slave redeemed by payment of the debt. Some slaves redeemed by finding a substitute; others on relinquishing the consideration of servitude. A female slave, bearing a son to her master, is emancipated. Form of manumission. A slave is destitute of exclusive property. The wife of a slave becomes slave to the same master. - - - - -

347

ARTICLE II. On persons liable to slavery. Slavery not permitted in the inverse order of classes. Penalty for the ill employment of a man of high class. Punishment for illegally enslaving a woman. - - - - -

370

SECTION III. On wages and hire. Wages regulated by agreement or by fixed rates; paid according to work done. Proportion of the produce allowed to ploughmen, &c. Wages of seamen. Care of implements intrusted to a servant. Penalty for neglect. Obligation to complete the work undertaken. Loss, happening by the fault of the servant, must be made good by him. Interest on wages which are withheld; a fine imposed. Hire of dancing girls and harlots. Hire of a house, cattle, and vehicles. - - - - -

376

racies punished, and improper meetings repressed. Penalty for refusing to associate as usual with another. Fraud on the revenue punished. Property of a community. All the associates share the stock and debts while they remain in the society. - - 401

### CHAPTER III. ON RESCISSION OF PURCHASE AND SALE.

SECTION I. On rescission of purchase. Form of delivery six fold. The title defined When a purchase may be rescinded. Time allowed for examining commodities. Penalty on returning goods purchased. Goods, sufficiently examined before purchase, cannot be returned. Goods may be returned if a concealed blemish be discovered but not a thing bought with known blemishes - - 423

SECTION II. On rescission of sale. A compensation must be made. Penalty for detaining goods after the price has been paid or tendered. Penalty for rescinding the contract. This law is extended to all contracts. Forfeiture of a tenth part by breach of contract. On whom the loss falls, if goods be damaged. Punishment of frauds. Forfeiture of earnest. Resumption of a thing illegally sold. Fines on cheats Punishment of combinations to raise or forestall the market. Regulation of market rates. Sale of old apparel. Barter. - 434

### CHAPTER IV ON DISPUTES BETWEEN MASTER AND HERDSMAN.

SECTION I. On wages of herdsmen and their duties. The rates of wages in kind. Duties of a herdsman. Responsible for cattle if lost by his fault. Defence of cattle. Penalty for neglect. These rules extended to all cattle. Evidence of the natural death of cattle. - - - - - 453

SECTION II On fines for mischief done by cattle. A common pasture must be left, proportionate to the size of the town. Definition of village, town and city. Trespasses within the common &c. not punishable, unless the herdsman offend wilfully. Fines and punishment of trespasses. A sufficient fence should be made Fines varying with the quantity of damage, with the sorts of cattle &c. The owner is not answerable for the fault of the herdsman: but the grain damaged must be made good. - - - - - 461

SECTION III. On trespasses not finable. If the herdsman be disabled by unavoidable accident, neither herdsman nor owner is blamable. Consecrated cattle &c. exempt from penalties. The owner of certain cattle, as elephants, horses &c. is not amenable. No fine for small animals generally useful, as cats &c. Cattle must not be maltreated.

Reward of fidelity and obedience. Punishment of disloyalty, Fine for misconduct. - - - - -

541

SECTION II. On the conduct of women, whose husbands are absent.

They should subsist by blameless arts, avoid sports, dress &c. They must live under control, with a guardian. - - -

561

### CHAPTER III. ON THE DUTIES OF A FAITHFUL WIDOW.

SECTION I. On dying with or after her husband. Future reward of burning with her husband's corpse. It is an atonement for evil. Reward of burning on a second pile upon news of the husband's death. Pregnant women and others not permitted to burn. A priestess not permitted to burn on a second pile. Cremation may be delayed to give time to the widow. - - - - -

567

SECTION II. On the duties of widows choosing to survive their husbands.

They must practise austerities, avoiding certain gratifications. Reverence is due to faithful wives. By rigid conduct a widow attains bliss. By a second marriage she forfeits it. - - -

575

### CHAPTER IV. ON INCONTINENCE.

SECTION I. On the appointment of a wife to raise up offspring. A son may be procreated by a kinsman on the widow of a *Sûdra* after a legal appointment. Such a son is called son of the wife. Afterwards the kinsman and widow must behave like father and daughter. -

581

SECTION II. On the same; and on such husbands as may be forsaken by their wives. Sinners and others may be forsaken, to take another husband for the sake of progeny. How long a woman must wait for her absent husband. The practice of raising up issue to a deceased kinsman is reprehended and prohibited in the present age. -

585

SECTION III. On second marriages. Distinction of twice married women and incontinent wives. Their children are degraded; themselves despicable and sinful. A woman must not be given away without her own consent. Certain women shunned in contracting marriages. Fine for giving in marriage a blemished damsel. Fine for defamation. Marriage of a widow to the brother of the deceased. Her consent requisite. The receipt of a nuptial gratuity by the father

centured.



censured. After a promise, a worthier bridegroom may be nevertheless preferred. From certain men a damsel may be taken back. Case of a damsel betrothed to two men; and case of long absence of the intended bridegroom. Fine for abandoning an unblemished girl; fine for giving a blemished damsel: she may be abandoned. Blemishes of damsels. Qualities requisite in the bridegroom. Mutual affection and fidelity of husband and wife.      -      -      -      592

## VOLUME THE THIRD.

### PART II. SUCCESSIONS.

#### *BOOK V. On Inheritances.*

##### CHAPTER I. ON PARTITION OF PATRIMONY.

SECTION I. On succession in general.—ARTICLE I. On property; and on the transfer of it. The title of inheritance defined. Digression on the nature of property.      -      -      -      -      I

ARTICLE II. On succession of sons. Male issue by males inherit. Brothers may divide the estate after the death of both parents; but have no power over the estate while the father lives, unless he be disqualified: they have not uncontrolled power even over their own acquisitions. The eldest son is manager in the absence of the father; and may continue so after the death of the father: he is preeminent; benefits his father; and should support the rest of the brethren: veneration is due to him. In his default, any capable brother may conduct the affairs. Heirs may either live together or make a partition. 21

SECTION II. On partition and on the portion of an elder son. Partition may be made by a father if the mother be old. Reasons for partition by a father: it may be regulated by his pleasure, he may reserve any part of his own acquired wealth; and give more to some, and less to others: but none should be preferred nor excluded without cause; nor from any improper motive. Wealth gained by a common exertion must be equally divided. Two modes of partition. A legal distribution made by

by a father is binding on his sons. Portions deducted for the eldest and other sons ; but not on a second partition after reunion , nor if the eldest son defraud his brothers. Sons equal in class have equal shares. Distribution among sons by different mothers. Partition by allotting shares to mothers for their sons. Partition among sons unequal in class. Seniority how determined in the case of twins, and in low classes. Distribution by successive choice. Portion allotted to an unmarried sister. The acquirer of property generally obtains a double share. The practice of deductions in right of seniority is now obsolete. - - - - -

36

CHAPTER II. ON THE DISTRIBUTION MADE BY A FATHER IN HIS LIFE TIME.—Assignment of maintenance to infants &c Grandsons entitled to the shares of their fathers , allotment of shares to them and to great grandsons. Partition extends only to the fourth in descent inclusive. Relation of *Sapindas*. Allotment of shares to wives, to mothers, to grandmothers, and to sisters Present to a superseded wife Perpetual union of husband and wife The father may give away at pleasure, or retain, property acquired or recovered by him, but over the landed patrimony the father and son have equal dominion , it shall be therefore equally divided , but the father may reserve two shares. Period when partition may be made. Case of a son born after partition. Claim of a father on the acquisition of his son Any one of the coheirs may debit himself of a share. Allotment to one, who is employed in the affairs of the family. Question on the payment of debts. - - -

87

CHAPTER III ON PARTITION AMONG BROTHERS.—It should be made amicably, after the death of the mother. They participate equally in the assets and debts after the death of both parents. Greater portion of a virtuous brother. Allotment of 1 share to a widow supposed to be pregnant. Equal partition of all property. Allotment to sisters for the expenses of their nuptials. Allotment for the completion of the religious ceremonies of brothers. A coheir need not make good what he has expended during coparcenary. A double share

Share of wealth acquired is in general allowed to the acquirer. Distribution among brothers unequal in class. Sons inferior in class to their father are excluded from the inheritance of certain sorts of property. Allotment to a natural son by a *Sudra* woman, and to sons begotten in the inverse order of classes. Marriage with women of a different class is now prohibited. Claim of a son begotten by a *Sudra* on his female slave. - - - - - 159

#### CHAPTER IV. ON SONS LEGITIMATE AND ADOPTED.

SECTION I. On the several modes of filiation. Twelve sons enumerated. Six are heirs to their fathers only six are heirs to collaterals also. An adopted son has no claim on the family and estate of his natural father. Ceremonies necessary to filiation, adoption of sons limited to their fifth year. Discrepancies in the enumeration of sons. 225

SECTION II. On the son begotten in lawful wedlock. Definition of legitimate birth. - - - - - 235

SECTION III. On the son of an appointed daughter.—ARTICLE I. On the rights of an appointed daughter and of her son. Each considered as a son. Their equal claim with a son of the body. Appointment of a daughter to raise up issue to her father. Allotments to different sons A daughter's son considered as a grandson in a male line. - - - - - 240

ARTICLE II. On the appointment of a daughter to raise up a son to her father. Form of an express appointment. Implied appointment. - - - - - 266

SECTION IV. On the son begotten on an appointed wife by a kinsman necessity of a legal appointment and of strict adherence to the forms enjoined. Question on his prior right of inheritance before the daughter's son Excluded in certain instances. Considered as son of two fathers, he is heir of both. - - - - - 273

SECTION V. On the son of concealed birth. He is considered as son of his mother's husband. An adulterine belongs to his natural father if known Question on the claims of the husband and of the natural father - - - - - 288

SECTION VI. On the son of a young woman unmarried. He is fifth

in rank ; considered as son of his maternal grandfather, or as son of his mother's subsequent husband.	- - -	<i>Page</i> 302
SECTION VII. On the son by a twice married woman. He belongs to his natural father. Adopted sons become so by a fiction of law.		314
SECTION VIII. On the son given. Power of parents to give away a son. Form of adoption. Question on the right of adopting a son, if a nephew be living. Adopted sons are entitled to a maintenance, and shall inherit if virtuous. Various forms of adoption now forbidden, and this form only permitted.	/ - -	320
SECTION IX. On the son bought. The right of succession restricted to sons equal in class.	- - -	352
SECTION X. On the son made by adoption.	" " "	355
SECTION XI. On the son selfgiven.	- " " "	357
SECTION XII. On the son of a pregnant bride.	- -	359
SECTION XIII. On the son rejected by his natural parents.	-	361
SECTION XIV. On the son by a woman of the servile class.	-	364
SECTION XV. On the various sons already mentioned. The first in rank takes the estate and supports the rest. On failure of the first, the next in rank takes the heritage. Adopted sons are substitutes for true sons. Male offspring required for obsequies &c.		366

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## VOLUME THE FOURTH.

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### CHAPTER V. ON EXCLUSION FROM PARTICIPATION.

SECTION I. On persons excluded from inheritance. A vicious son or brother, an outcast, a professed enemy to his father, an eunuch, a leper, a madman, an idiot, an impostor, and a man born blind, deaf, or lame, are excluded, but entitled to maintenance except the outcast and his offspring. With the same exception, their sons inherit. Eight sorts of leprosy. Obsequies of outcasts and lepers forbidden. Certain diseases are tokens of former sins. Impotence defined. Wives and daughters of excluded persons must be maintained. Exclusion of sons born in the inverse order of classes, or born of any illegal marriage. Hermits are excluded. Divorce of a wife illegally espoused.

son born after partition preferable to the claim of the rest : partition with such a son. - - - - -	131
SECTION II. On the share of a parcener coming after partition. He shall obtain his share ; but after the lapse of a certain space of time, his right is forfeited by adverse possession. Consanguinity defined.	142

### CHAPTER VIII. ON COLLATERAL SUCCESSION.

SECTION I. On succession to the estate of a housekeeper leaving no male issue. I. Succession of the widow : her duties ; she has not power to give away the estate ; after her demise, it devolves on the legal heirs of her husband. - Distinctions in respect of her prior right of succession. II. Succession of a daughter : prior right of an unmarried daughter. III. Succession of a daughter's son. IV. Succession of parents ; question on the prior right of father or mother. V. Succession of a brother ; distinction arising from reunion of brothers ; claim of the whole, preferable to that of the half blood. VI. Succession of nephews. VII. Succession of other near kinsmen. VIII. Succession of maternal kindred. IX. Succession of distant kinsmen. X. Succession of strangers, or escheat to the king, on failure of heirs. The king is guardian of minors, widows, &c. The heir must perform obsequies. - - - - -	159
SECTION II. On the inheritance of anchorets and devotees. -	247
SECTION III. On a second partition after reunion. - -	250

### CHAPTER IX. ON SUCCESSION TO FEMALES.

SECTION I. On the property of women. Their peculiar property is six fold. The husband has power over other sorts, but not over her exclusive property except in certain cases. After her, the legal heirs of her husband take what has devolved on her by his death. -	259
SECTION II. On succession to the exclusive property of a woman.——	
ARTICLE I. On the succession of her issue male and female. Her sons and daughters are heirs. Unmarried daughters inherit before married daughters. Female issue take certain sorts of property. A daughter's daughter is excluded. Forms of marriage. -	289
ARTICLE II. On the succession of other heirs. Distinction of wealth	

received at nuptials. The husband is first heir in some instances,  
 the father in others; but after her children. Brothers are heirs of  
 an unmarried woman; and of a married woman, who leaves no issue.  
 Nuptial presents revert to a bridegroom. Claim of sister's sons &c.  
 Right of performing obsequies.      "      "      "      "      "



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P A R T I.

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C O N T R A C T S.

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# PREFACE OF THE COMPILER.

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HAVING saluted the ruler of gods, the lord of beings, and the king of dangers, lord of divine classes, the daughter of the king of mountains, the venerable sages, and the reverend authors of books, I, JAGANNĀT'HA, son of RUDRA, by command of the protectors of the land, compile this book,

2. Entitled the sea of controversial waves, perspicuous, diffusive, with its islands and gems, pleasing to the princes and the learned.

3. WHAT is my intellect, compared with the sacred code? A feeble bark on a perilous ocean. The favour of the supreme ruler is my sole refuge in traversing that ocean with this feeble vessel.

4. THE learned RĀDHĀCĀNTA, GURUPRESHĀDA of firm and spotless mind, RĀMAMOHANA, RĀMANID'HI, GHANAŚYĀMA, and GANGĀDHARA, a league of assiduous pupils, must effect the completion of this work, which shall gratify the minds of princes: of this I have unquestioned certainty.

5. EMBARKING on slips, often do men undaunted traverse the perilous deep, aided by long cables, and impelled by propitious gales.

6. HAVING



6. HAVING viewed the title of loans and the rest as promulgated by wise legislators in codes of law, and as expounded by former intelligent authors,

7. And having meditated their obscure passages, with the lessons of venerable teachers, the whole is now delivered by me.

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# BOOK I.

## ON LOANS AND PAYMENT.

### CHAPTER I.

#### ON LOANS.

#### SECTION I.

##### ON LOANS IN GENERAL.

##### I

**N**AREDA —WHAT may, or may not, be lent, by whom, to whom, and in what form, with the rules for delivery and receipt, are held *comprised under the title of loans delivered* (*řinadana*).

“By whom,” as a creditor, a loan may be delivered or advanced, namely by a mercantile man and the like “To whom,” as a debtor; meaning to other persons than women and the rest “In what form,” with a pledge previously taken and so forth “What may be lent,” the excess above that, which ought to be appropriated to the support of the family and the like All that *is comprised under the title of loans delivered*

AGAIN “by whom” as a creditor, a loan ought not to be delivered or advanced, namely by a priest or the like not subsisting by his own *regular* livelihood “To whom,” as debtors, to women and the rest “In what form,” meaning clandestinely “What may not be lent,” that, which only suffices for the support of the family and the like All that *is comprised under the same title*

AGAIN “by whom” a debt should be delivered or paid, namely by the debtor “To whom,” to the creditor *himself*, not through his wife or the like

like. "In what form," with a writing previously executed and so forth. "What should be paid," a debt contracted by *the party* himself and the like. All that *is comprised under the present title*

AGAIN "by whom" a debt need not be paid, by the great grandson of the debtor or his remoter descendant. "To whom" *it should not be paid*; to the wife of the creditor and the like. "In what form," clandestinely. "What" *should not be paid away*, the exclusive property of the wife and so forth. All that *is comprised under the present title*

"THE rules for delivery" *by the creditor*, the rules for advancing a loan on interest, namely, what sort of interest may be taken without a breach of duty on the part of the creditor. "And *the rules for receipt*," the rules for receipt by the creditor at the period of liquidation. *those rules* are the modes of recovery consonant to moral duty and the rest. "The rules for delivery" by the debtor, the rules to be propounded for the discharge of debts, such as payment on demand or the like. "The rules for receipt," the delivery of stipulated interest and so forth. All these titles of forensick contest are comprised under the title of loans and payment. the particulars will be delivered under their respective heads, a little has been mentioned cursorily in this place, to explain the import of the text

ON the reading preferred by BHAVADĒVA and others, *yat'hā bhavet* instead of *yat'L-chayat*, *the sense is similar*. the loan, which may be advanced, is comprehended under the title of loan and payment, this forms one member of the sentence. So such loans *as may not be made, and so forth, are also comprised under the same title* and the terms loan and debt may be understood in the secondary sense of *a loan not actually advanced, or a debt not actually contracted*

ACCORDING to the *Mitacsharā*, the title of loan and payment is seven fold, five fold in respect of the debtor, and two fold in respect of the creditor, namely, *in respect of the last*, the rule for delivery and the rule for receipt. This will be subsequently explained \*

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\* See Chapter V on payment of debts

BUT the etymology of the term *rīnadāna* is this, “ the complete delivery (*adāra*) of a loan or debt (*rīna*), by whom, where, and to whom made ” an apposition in the form called *bahubhrī*. By the term, “ complete delivery,” both the advance and repayment are expressed. But, if the thing lent be understood, according to the rule, that “ neuter derivatives from active words are similar to nouns denoting substance,” the word *rīnadāna* only signifies “ a loan or debt (*rīna*) completely delivered (*adīyamana*),” being derived in the form of apposition called *carmad'bhāṣya*. Yet it may be also understood in the sense resulting from apposition in the form called *bahubhrī*, “ the complete delivery of a loan or debt, by whom, or in what place made ” The application of several senses to a wordly phrase, through the ambiguity of terms, is unexceptionable. It is accordingly said, that, “ in wordly matters, there is no objection to distinguish a phrase according to the distinction of inferible meaning ” and these, though words of a holy sage, are secular, for they are unconnected with the *Veda*.

IN the expression, “ the loan ought not to be delivered or advanced,” the word “ loan ” bears a secondary sense, for it is connected with the secondary notion of the request *without the actual advance of the loan*, and so forth; and it does not denote what will be mentioned as the defined sense of loan or debt.

OTHER lawyers explain the title, “ receipt (*adāna*) of a loan (*rīna*), by what mode *obtained*,” another apposition in the form called *bahubhrī* and the third or causal case is used adjectively, thus the essential properties, with which the receipt of a loan is connected, are severally titles of loans received. Those essential properties are the creditorship of a *Vaiśya* or the like, the debtorship of others than women or the like, feneration at the rate of an eightieth part *by the month*, and so forth. NĀREDA also specifies, as comprehended under the title of loans, the place where, or *person to whom*, the loan is made (I)

IT is said, “ may, or may not, be lent,” but what is a loan? the sage replies to that question,

## II

NAILEDĀ.—THAT contract of delivery and receipt, which is made with a view to a gain by *the lender* on the principal sum while remaining *with the debtor*, is called a loan on interest (*cusida*); and money-lenders acquire their subsistence by it.

“ THE principal sum,” literally its continuance the contract of delivery and receipt is made with a view to gain or increase, so long only as the principal remains *with the debtor*. These two, *the words delivery and receipt*, are in the passive form. The loan is delivered by the creditor with a view to a gain on a durable capital, and is received by the debtor with a stipulation to that effect. When it bears no interest, then the term “ loan ” is employed in a secondary sense, *for* a subsistence is not thereby gained.

A SECONDARY notion, or quality, is stated, in the fourth lecture of the *Nyāya* \*, to be that which is necessary to the existence affirmed †. That, which is given, is received back, or something of the same kind *in its stead*; hence what is advanced for the purposes of traffick, is not a loan.

VĀCHESPATI MISRA

“ THE principal sum,” the continuance of the money lent. “ A gain,” the acquisition of money or the like. The very loan, which is advanced by the owner or *creditor* with a view to that, is received by the user or *debtor*.

The *Retna arā*.

CONSEQUENTLY, that property, which affords a gain stipulated in consideration of its remaining *for a time* with the debtor, is a loan, or that, which produces a gain by being advanced to remain with the debtor, is a loan. Such is the definition of loan. A full account of this will be delivered in another work.

\* Treatise of GŌTAMA (Cāradakya) by

† The same is due to the subject

WHEN interest is not borne, the word "loan," or debt, is employed only in a secondary sense, for money-lenders do not acquire their subsistence by loans without interest and it is employed in a general and secondary sense in the phrase "a loan shall be given" and in this "he, who takes the assets, shall be compelled to pay the debts" and in other instances 'What is necessary to the existence affirmed,' refers to the agreement, that "the debt shall positively be repaid" and this extends to other things, as *payrent* on demand and the like Such is MISRA's opinion

BUT we maintain this definition, money, advanced with a view to the future *revived* property of the creditor, and to his gain by means of interest or the like, is a loan, for, even without interest, there may be friendship gained or the like The term is not employed in a secondary sense friendship and the like are comprehended in the phrase, "the acquisition of money or the like"

"THE continuance of the principal sum," its remaining with the debtor, its being unrepaid, and so forth 'So long only as the principal remains,' since the term "only" excludes any other supposition, interest is not obtained if the principal sum be wanting. But, as for what is advanced for the purposes of traffick, there is not any non-repayment, for the exact meaning of non-repayment is, that, after the creditor's property has ceased *by the act of delivering the thing lent*, neither the thing *itself*, which had been his property, is *ultimately* restored, nor an equivalent *immediately* given. Or else, the advance of the principal may be signified by the expression, "so long only as the principal remains," for it shows an inseparable relation \* In traffick and the like, the employment of a man's own property with a view to gain is acknowledged, not the employment of another's property According to MISRA, gain consists in the excess above the principal held as a man's own property.

view to a gain;" under the term "gain" are comprehended the interest received by the creditor, friendship *gratified*, duty fulfilled, or the like; it also comprehends the debtor's enjoyment of the thing lent and the like. Hence the exposition of the *Retnâcara*, "the acquisition of money or the like:" it is not there said "received by the debtor," but "received by the user;" nor is it clearly shown, that the expression, "with a view to gain, so long only as the principal remains *with the debtor*," is that form of speech which is named *Saptimī tat puruṣṭa*.<sup>\*</sup> It appears, therefore, that a loan or debt is money connected with a gain *allowed* in consideration of the creditor's property in it; on the notion, that, because the money was the property of that man, therefore the gain is his. Or it may be "money connected with a gain *allowed* in consideration of the debtor's *temporary* property in it." Or, if the apposition be thus explained, "with a view to the permanence of *the capital* and to a gain," the permanence of the capital denotes the future revived property of the creditor, and gain signifies interest *received*, duty *fulfilled*, or the like. Consequently the word "loan" is not employed in a secondary sense, even where no interest is borne; for the phrase, "money-lenders acquire their subsistence by it," relates solely to loans bearing interest; and the transactions of commerce and the like connect a price with the thing, and a commodity with the purchase: it is not customary in *traffic* to make a distinction, "this is the principal sum, this the increase:" therefore a capital so employed is not a loan.

It should be here noticed, that, in the first place, the borrower asks for money; next the lender gives the money, saying or thinking "so much interest must be paid, and the principal sum be repaid:" property is thereby vested in the user or debtor; for the verb "give" signifies an act vesting property in another, after annulling the agent's own property. Hence, if the debtor happen to lose that money, the loss does not fall on the creditor; and, *from the same cause*, the debtor may at pleasure dispose of what he has borrowed. Afterwards, since, by reason of the agreement made, the amount of the principal sum must be repaid with interest, or an equivalent be given, the credi-

<sup>\*</sup> Apposition of terms, where the lat is chiefly considered, and which is resolvable into the seventh case. The compound *ś hīna līkha* has been thus resolved into *ś hīna śatyam līkha*, gain, only if the capital remain.

tor's property is *revived* by payment made by the debtor ; or if he refuse to pay it, the debtor commits a sin and is liable to punishment. Creditorship and debtorship are distinguished by some peculiarities ; the definitions are not therefore identical : \* it is the same in speaking of undivided brethren and the like.† The delivery of a loan or debt (*rīnādāna*) is a phrase, not a compound word. To enlarge would be superfluous.

Is not loan on interest (*cusīda*), instead of loan generally (*rīna*), explained by such a definition ? This question is answered by the following text.

### III.

VRĪHASPATI :—THAT loan (*rīna*), which, increased to four times or eight times the principal, is *thus* received back, without apprehension of sin, from an abject or distressed person (*cutfita* and *sīda*), is called a loan on interest (*cusīda*).

“ FROM an abject or distressed *debtor* ;” from a debtor who is an outcast or otherwise abject, or who is indigent or otherwise distressed. What is received back with interest from such a debtor without apprehension of sin ; without fear of any consequent sin (for such receipt is no acceptance of gift from an unworthy person). Hence a loan (*rīna*) is called a loan on interest (*cusīda*).

IN this instance there is only the sin of distressing a miserable person ; but there is none, if his misery were merely pretended : and even if he were really distressed, the creditor may confer a benefit by prolonging the term of the loan or otherwise : and such is the practice.

SHOULD the principal sum only be received back, or should it be received with interest ? On this point the sage says, “ increased to four times or

\* *Ātmāśraya* ; identical. Such definitions are faulty, as A son of B, and B father of A.

† Apparently liable to a similar objection, that they can only be thus explained ; undivided brethren are those who have not made a partition ; and divided brethren are those who do not remain in coparcenary.



eight times the principal." The word " or " is indefinite ; it also suggests a debt doubled or the like. Hence it has been already said, " what is received back with interest." Loans quadrupled and the like will be explained under the head of limits of interest.

SINCE the words *rīna* and *cusīda*, are used synonymously, the definition of *cusīda* is also the definition of *rīna*: and that is made evident by NĀ-REDA (I & II). The other text (III) only shows the verbal derivation of the word *cusīda*. This exposition conforms with the opinion delivered in the *Retnācara*. The definition of the word *rīna*, which occurs in the first text (I), is well delivered by a text of NĀ-REDA (II), although the term be changed in that text. But the word *cusīda* is formed adverbially (*from the particle cu and noun sīda*).

By whom a loan should be advanced, NĀ-REDA declares in the concluding part of the text quoted (II) ; money-lenders acquire their subsistence by it. The causal has the sense of identity ; " even that is their livelihood." Or the word subsistence (*vitti*) in a neuter sense, may signify *their mode of existence*. Money-lenders are men of the mercantile class ; accordingly YAJNYAWALKYA, in the chapter on modes of subsistence, says,

YAJNYAWALKYA:—MONEY-LENDING, agriculture, traffick and attendance on cattle are declared to be *the proper subsistence* of the mercantile class.

" MONEY-LENDING ;" placing money at interest. " Traffick ;" living on the profits of purchases made at a fair price.

*The Dīpalcikā.*

## V.

MENU:—THE king should order each man of the mercantile class to practise trade, or money-lending, or agriculture and attendance on cattle ; and each man of the servile class to act in the service of the twice-born.

The

THE king should compel a man of the mercantile class to practise trade, money-lending, agriculture, or attendance on cattle; and a man of the servile class to act in the service of the twice-born. If they refuse to do so, they should be amerced by the king: on that account, only, it is mentioned in this place (*in the 8th chapter, on judicature; and on law, private and criminal*).

CULLÚCABHATTA.

THE meaning is, that the expression, "the king should compel them to practise &c." implies, that they should be amerced, if they refuse to do so. But, if a *Vaisya* do not practise money-lending through apprehensions entertained by him, that the loans will not be subsequently repaid, he should not be fined. Since it is declared by MENU, that an *Ambast'ha* should live by curing disorders,\* but, *since men of mingled births may follow the occupation of their mother's class*, an *Ambast'ha*, adopting the profession of the mercantile class, should not be fined if he do not practise money-lending. To enlarge on the subject of fines, which have been incidentally mentioned, would be superfluous.

For the sake of conferring benefits and the like, any proprietor of wealth may lend money without intending to obtain interest, for that is not prohibited. By those who may practise money-lending a small part only of their wealth ought to be lent: this being incidentally mentioned, BHAVADĒVA cites the *Mārcandēya purāna*, on the subject of what may not be lent.

## VI.

*Mārcandēya Purāna*: — A PRUDENT man should set apart a fourth of his property for *pious uses with a view to another world*; and apply half to his own subsistence, and to constant and occasional rites;

2 He should augment the *remaining* fourth of his property,

\* Chapter 10. v. 47.

or half of half, making it his capital; the wealth of him, who acts thus, becomes productive.

The meaning is, that the whole property should not be lent; and, if the estate be small, and the family be barely maintained from it; in that case no loan should be made. Such is the ascertained sense of the text. But, if the means of subsistence cannot be provided by the pursuit of their own profession, even priests may place money at interest: this *VRĪHASPATI*, quoted by *BHĀVADĒVA*, declares.

## VII.

*VRĪHASPATI*:—A TWICE-BORN man may practise money-lending, agriculture or trade, not conducted in person; and even practising them in person, during seasons of extreme distress, he is not tainted with sin.

2. HAVING received gain, let him honour the progenitors of mankind, the deities and priests; when they are satisfied, no doubt they deprecate that offence committed by him.

THE word twice-born concerns a man of the sacerdotal class; for it is said, "he is not tainted with sin;" if it concerned a man of the commercial class, it would be superfluous to say, "he is not tainted with sin;" for it is not supposed, that a man of the commercial class sins by practising money-lending. Men of the military class may also practise money-lending in seasons of distress, for *MENU* says, "but a *Brāhmaṇa* and a *Chātanya*, obliged to subsist by the acts of a *Vṛjja*, &c."\* If they can subsist by their regular profession, priests ought not to rely on money-lending for a livelihood, since a text of *MENU* declares,

BUT, among those six acts of a *Brāhmaṇa*, (reading and teaching the *Vēdas*, sacrificing and assisting to sacrifice, giving and accepting), three are his means of subsistence; assisting to sacrifice, teaching the *Vēdas*, and receiving gifts from a pure handed giver.†

\* Cl. 2. 11. 10, v. 33.

† Cl. 11. 10, v. 33.

AND because MENU reprehends the occupation of a *Vaiśya* followed by a *Brāhmaṇa* ;

His own office, though defectively performed, is preferable to that of another, though performed completely ; for he, who *without necessity* lives by the acts of another class, immediately forfeits his own.

HIS own office (which should regularly be discharged by him), however defectively it be performed, is preferable to that of another though fulfilled ; because he, who lives by the acts of another class, instantly falls from his own : this inculcates the necessity of avoiding such offences.

CULLŪCABHATTA.

HERE it should be understood from the expression, "he, who lives by the acts of another class," that such a practice, whether in person, or not in person, is reprehended. It is also the opinion of eminent lawyers, that penance must be performed for exceeding the rate of an eightieth part and the like, by taking greater interest in a season when no distress is experienced. It would be vain to discuss further the subject of livelihood.

MONEY-LENDING may be also practised by a *Śūdra* in times of distress ; for YĀJÑYAWALKYA authorizing traffick, and the *Nerajñha purāṇa* authorizing agriculture, which, it may be inferred, are accompanied by money-lending, it is a reasonable induction, that money-lending is also authorized : and, according to the opinion of VĀCHESPATI MISRA, it appears, that a *Śūdra* may receive a gain.

YĀJÑYAWALKYA :—A *Śūdra* should serve twice-born men ; but, if he cannot thus subsist, he may become a trader.

THE *Nerajñha Purāṇa* :—UNASKED he should give alms to priests, and rely on agriculture for his subsistence.

By whom a loan may be made, and by whom it may not be made, have been both cursorily explained.

SECTION II.

## SECTION II.

ON THE SAME, AND ON THE FORM OF THE CONTRACT.

## ARTICLE I

ON THE IMPROPRIETY OF LENDING TO CERTAIN PERSONS

## VIII

CA'TYAYANA —LET no man lend any thing to women, to slaves, or to children whatever thing of value has been lent to them, the lender cannot *in general* recover *without the assent of their guardian or master.*

NOTHING should be lent to women, because they are unable to repay it, for it is recorded, that they have no property exclusively their own (Book II Chapter IV v LVI) May not their debts be repaid by their husbands? This should not be affirmed, for it is confuted by a text of YAJÑAWALKYA, which will be quoted It should be here understood, that a widow has property in the wealth she possesses; but, since she is very helpless, and only supports herself on the abundant wealth *before* acquired by her husband or the like, out of what funds can she repay the loan? From this apprehension, nothing should be lent even to widows But, if there be any certainty of repayment, then a loan may be made, for this text is *only* a rule of ethics and since a loan may be subsequently repaid by her son there is no objection against a loan made to a woman who has a son whether she be a widow or have a husband living Nor do we see any objection against loans made to women, who have separate property, on the mortgage of their immovable property. A debt, contracted by a woman, whose husband is absent for her food and apparel, or for the support of her servants, must be repaid by her lord, and debts, contracted by the wives of herdsmen and the like must also be repaid by their husbands we hold it a rational opinion, that there is no objection against lending money to those women

NOTHING should be lent to slaves, because they also are declared to have no  
property

property exclusively their own, by the text above quoted Here a man's own slave is meant, he should not therefore lend any thing to his own slave, for what that slave acquires, belongs to *the master* himself This rule may be applicable to slaves bought, but why should not loans be made to hired servants, for the loans may be repaid out of their wages? Such a doubt should not be entertained since a servant only maintains his family with difficulty out of trifling wages, whence can he repay a loan? But there is no objection against loans made to servants hired on great wages, and the practice of *making such loans* subsists amongst excellent persons

NEITHER should a man lend any thing to the slave of another, because all his property is dependant on his master if, therefore, a man do lend any thing to the slave of another, it cannot be demanded from his master. But, if the slave of any person ask a loan in his master's name, and it be ascertained that he asks it for the support of his master's family, in that case a loan may be made, for it is declared by a text of CA'TYAYANA, that such a debt must be discharged by his master

## IX.

CA'TYAYANA.—BHRĪGU ordained, that a man shall pay a debt contracted in his remote absence, even without his assent, by his servant, his wife, his mother, his pupil, or his son: *provided it were contracted for the subsistence of the family.*

BUT when a loan is asked by a servant on his own account, whether he belong to the lender or another person, it may be given on the pledge of his wages; this will become evident on the further discussion of the subject: these texts will be explained and discussed in another place, to enlarge would be *now* superfluous

A YOUTH is a minor to the end of his fifteenth year, as we shall show in the chapter on the payment of d-bts *Nothing should be lent "to children,"* this intends generally any person incapable of civil acts, and comprehends idiots and the like. If there be guardians of the minors and the rest, namely their maternal uncles or the like; and these take up a loan from a money-lender, for the benefit of the minor or other ward, executing a deed in the ward's

name and their own; in that case the loan may be legally advanced after ascertaining that the guardian does not act fraudulently : although no text occurs *to this purport*, it is proved by the frequent practice of good men. Afterwards, when the minority expires, the creditor may recover the debt from that youth ; but, while the minority lasts, he could only recover it from the maternal uncle, or other person entitled to act *as guardian*. This should be observed by the wife.

REVEREND persons, as spiritual parents and the like, to whom harsh discourse cannot be addressed, and who cannot be sued in the king's courts of justice, may be comprehended under this text, by considering " Children " as an instance adduced of a general meaning. Consequently, to them also nothing should be lent; but a person, who possesses wealth, must maintain them, else he would fail in his duty.

## X

NĀREDA to INDRA, in the *Herivanśa* : — No man, O thou subduer of foes, should have pecuniary dealings with him, from whom he desires much affection, nor visit *his* wife in his absence.

" *His* " must be supplied.

BHAVADEVĀ.

" PECUNIARY dealings"; the advance or acceptance of a loan; it may also be understood of deposits and the like. The motive *for avoiding such transactions* is the apprehension of forfeiting friendship. But a distinction will be mentioned in another place. It is deduced from the obvious sense of the texts, that a loan may be made to any other person except those to whom it is forbidden to lend any thing.

## ARTICLE II.

## ON THE CONTRACT OF LOAN.

## XI.

VRĪHASPATI, quoted by BHAVADĒVA, VĀCHESPATI, and CHANDĒSWARA :—A PRUDENT lender should always deliver the thing lent, on receiving a pledge of adequate value either to be used by him, or merely kept in his hands, or with a sufficient surety, and either with a written agreement, or before credible witnesses.

*Any of these, by which confidence may be given to the lender, should be furnished. They are mentioned generally.*

MISRA.

THE word *here* employed intends comprehensive illustration. If, therefore, the lender have in his power, by bailment or otherwise, property of more than adequate value belonging to the borrower, this security is also intended by the text. In like manner, where land belonging to any person is taken by another for the purpose of tillage, if the landlord ask a loan of the cultivator, and he advance the loan even without receiving a mortgage of the land, in that case, although there be other creditors, the cultivator, and no other creditor, takes the produce of that land until his loan be discharged: such is the practice. So, if the husbandman ask a loan of his landlord, the landlord, who advances a loan to the husbandman, and no other creditor, seizes the produce of his land, at the time of gathering the harvest, for the payment of the loan he has advanced: this custom also subsists in this country; and on this point there is also the authority of a text of CĀTYĀYANA (CCLXXXI); for there is no objection to consider land and the like as comprehended, in that text, under the word "capital." This will be discussed under the head of payment of debts: but hence it appears, that land or the like, on which there is such a lien, may be included in the terms of the text. So, in other cases also; for it only intends some ground of confidence in future repayment.



“ A PLEDGE of adequate value,” by the price or use of which the debt may be discharged with interest such a pledge, whatever it be. It relates both to the pledge to be used and that to be merely kept in his hands. The use of this condition, *that it should be of adequate value*, is obvious. Both names for a pledge (*adbī* and *bandha*) are employed by VRĪHASPATI, in a text which will be quoted (LXXX), as bearing the same sense but here a distinction appears to be intended by the separate mention of them. That distinction, on the concurrent opinions of CHANDĒSWARA, VĀCHESPATI, BHAVADĒVA and others, is as follows. “*Ādbī*” is a pledge to be used, such as land pledged with its produce, a cow, a female buffalo or the like, with her milk, a tree or the like, with its fruit; an elephant, a horse, an ox or the like, to be used for burden; distinguished by this circumstance, that they are not necessarily impaired by use. “*Bandha*” is a pledge not to be used, but merely kept, as a copper caldron or the like, a mass of iron or ingot of gold and the like, distinguished by this circumstance, that they are, or may be, impaired by use. This will be explained at large in the chapter on pledges. It may be noticed by the way, that a thing pledged should not be hypothecated by the creditor to another person as security for a debt contracted by himself.

“ WITH a sufficient surety,” with a good sponsor. one, by whom the sum can be paid.

BHAVADĒVA.

THE sufficiency of the surety consists in his power to enforce the punctual payment of the money.

CHANDĒSWARA.

BY these *glosses* both the surety for the advance, and the surety for repayment, are described. One gives security against the absconding of the debtor, he is surety for appearance, and makes a promise in this form, “ I will produce this man.” He, in confidence of whose assurance a loan is advanced to any person, is sponsor for honesty, he affirms “this person is unexceptionable.” The sufficiency of the first of these consists in his ability to produce the man if he abscond, or, by keeping *in view* the debtor’s property, to restrain his effects;

effects; and so forth. The sufficiency of the last consists in his skilful judgement of a man's veracity, and so forth. The sufficiency of all *sureties* consists principally in wealth adequate to make good the debt. Accordingly this is actually expressed by BHAVADEVĀ. But, in fact, honesty should be considered as a requisite to the sufficiency of a surety; for much time would be wasted in litigation, if a dishonest surety were accepted. It should be understood, that a person, such as a spiritual parent, from whom money cannot be recovered by harsh importunity and other *compulsory* methods, is not a sufficient person in a matter of suretyship, however venerable he be. Of this wise persons may judge from the *simple* exertion of their own intellect. A text of VRĪHASPATI (CXLII) is authority for distinguishing four sureties. That text is explained in the chapter on sureties.

“ WITH a written agreement” (XI); with a written contract of loan: such a writing is noticed by VRĪHASPATI cited by BHAVADEVĀ.

## XII.

VRĪHASPATI:—THAT mutual instrument, which is executed when the loan is delivered and accepted, is called the written contract of loan.

THE will to make and receive a loan is the cause of the contract. The construction therefore is, “when the loan is delivered and accepted by the will of the parties respectively” &c. What kind of writing should be given, is declared by NĀREDA quoted in the *Vyavahāra-tatva*.

## XIII.

NĀREDA:—WRITTEN evidence is declared to be of two sorts; *the first*, in the handwriting of the party himself, which need not have subscribing witnesses; and *the second*, in that of another person, which ought to be attested: the validity of both depends on the usage established in the country.

AN instrument in the handwriting of the party himself is good evidence, even though it be unattested; and, in that of another person, if attested:

such is the construction of *the text* by the relative order of *the terms* “ On the usage of the country ,” on such usage in respect of writings, as subsists in each country *on that usage the validity of both depends*, namely of an instrument in the handwriting of the party himself, and of one in the handwriting of another person

The *Vyavahara-tatwa*,

“ EVEN though it be unattested ” this expression suggests, that an attested instrument *in the handwriting of the party* is also included, *under this text*, as a valid document. Thus the sense is, that any attested writing is good evidence, and one in the handwriting of the party himself is good evidence, even though it be unattested. But in fact it is the practice of our country to call to witness the divine form of justice (*ŚRĪ DHARMA*) on such writings. An instrument in the handwriting of another person ought to be attested, and there the witness should be human. But even to such writings it is usual to attest the divine form of justice. However, should the party deny an instrument in the handwriting of another, and to which the name of justice is subscribed as *sole* witness, how can the judge’s doubts be satisfied? The ingenuous evidence of witnesses should therefore be adduced to prove an instrument drawn in the handwriting of another person.

Is not the scribe himself such *competent* evidence? This should not be objected, for YĀJNYAWALKYA declares dubious the evidence of less than three witnesses *and properly* these witnesses should be of the same class with the party, but, if that cannot be, they may be of other classes.

#### XIV

YĀJNYAWALKYA — THERE should *in general* be three witnesses, persons, who take delight in acts ordained in the *Veda* and in sacred law books, and properly, they should be of the same sex and class with the party, for whom they give evidence. but, if that cannot be, those of all classes may be examined \*

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\* The first and last parts only of this text are cited. I quote it at large from other effects.

HERE it should be noticed, that attested writings only ought to be given; for, *although* YĀJNYAWALCYA (XV) declares an unattested instrument in the handwriting of the party himself sufficient evidence, yet he also declares it to have no validity if it were obtained by force or fraud: when, therefore, a judicial proceeding is subsequently held, should the defendant plead, that it was obtained by force or fraud, then the arbitrators and the king may doubt its validity. For this reason a writing, which has subscribing witnesses, is preferable.

### XV.

YĀJNYAWALCYA:—BUT every document, which is in the handwriting of the party himself, is considered as sufficient evidence even without witnesses, unless obtained by force or fraud.

“*Upadhr*” here signifies fraud.

\* SUCH usage in respect of writings, as subsists in each country \*:’ in some countries the practice is as follows. After an auspicious term (*as* Śrī,) preceded by an epithet allusive to memory (*as* śmaranasīla), the name of the lender is written in the seventh case and plural number, and the name of the borrower is inserted with the termination of the sixth case before the word “*user*” or *borrower* (*C’bādaca*.) Next, the word “*Cafya*” is written; after which a word expressive of bond or obligation for debt is inserted, and declared by the word “*this*” subjoined. Next, the meaning of the parties is stated, the stipulation of interest, the promise of payment, and a binding clause, then, after dating the instrument by the solar month and day, the debtor’s name is again written, with the termination of the sixth case, on the right hand side of the paper, and the designation of place is added. The names of the witnesses are written on the back of the instrument. “The usage established in the country” intends this and other forms. Whatever be the usage in each country, that only should be observed in that country and the practice above stated is almost *literally* directed by

\* Comment cited from the *Vyavahara tatva* on v XIII

YAJNYAWALCYA for he suggests, that the lender's name should be first written, and that the instrument should be dated by the year, month, and day

## XVI

YAJNYAWALCYA.—WHATEVER contract shall have been concluded by mutual consent, a written memorial of it should be attested, after the lender's name has been first inserted,

2. It should bear the year, month, half month, and day, with the designation of the debtor, by his name, class, and the like\*.

THE epithet allusive to memory is suggested by a text of MENU It conveys, that this *instrument* is written for the sake of *assisting* memory

## XVII

MENU —EVEN in the space of six months men forget occurrences therefore were letters and writings anciently invented by the beneficent creator.

By the custom of the country, instruments are *now* written in the dialect of the *Yavanas*†, but among eminent *Brabmanas* and others, writings are also drawn in another language In some written contracts for auspicious rites, as marriage and the like, the word “*śraṣṭi*” is first written its intent is a *prayer*, may this rite be auspicious ! This is noticed by the way

## XVIII

YAJNYAWALCYA.—WHEN the transaction is completed, the borrower should sign his name with his own hand, adding, “ what is above written, has the assent of me, son of such a one.”

\* The first hemistich is not here cited I insert it from a subsequent quotation in Book V, collated with the code of YAJNYAWALCYA

† The *Moff mīn*

THIS suggests, that the debtor's name should be written above the contract. We do not determine whether additional matter, as titles and the like, and omissions, as leaving out the name of the party's father or the like, be founded on practice, or on the reason of the law, or, *in the last instance*, originate in indolence.

"HALF a month" (XVI); a *side of the month*, that is "a fortnight."  
 "By his name;" by the name of the debtor. "His class;" the sacerdotal or other class. "And the like;" the *Vēda which he follows in solemn rites*, and so forth.

## XIX.

YĀJNYAWALKYA declares the form of attestation:—AND the witnesses should sign *their names* all together, in their own handwriting, after writing the name of their fathers and so forth; adding, "I, son of such a one, am witness to this writing."

HERE it is, in substance, expressed, that the omission of the name of the witness's father is founded only on usage. If the instrument be in the handwriting of another person, the writer of it should add at the bottom of that instrument, "written at the request of both parties by me, such a one, son of such a one."

## XX.

YĀJNYAWALKYA:—LET the writer next subscribe, at the end of the writing, "this *has been* written, at the request of both parties, by me, such a one, son of such a one."

But the practice is for the scribe merely to sign his name with the letters बॄम्, (*standing for* बॄम्). All this is *only* mentioned to obviate the supposition, that the *forms of* writings, which occur in practice, are not directed by sages.

IF the debtor, or a witness, be illiterate, the following text directs the form to be observed in that case.

XXI.

**VYĀSA:—**BUT a borrower, who is unlettered, should direct another person to subscribe his *declaration of assent*; or a witness, *in the same predicament, should cause his name to be signed* by another witness, in the presence of all the witnesses.

WHEN these and other local usages are observed, then an instrument in the handwriting of the party himself, and one in the handwriting of another person, are valid, and good evidence of *contracts*. Such is the meaning of the sage, as expounded by authors. But in fact all this should be considered as intending such a document as may remove the doubts entertained by honest arbitrators or by the king. Else, if all *the parties*, the borrower, the lender, the witnesses, and the writer, be unacquainted with the forms of writings, and a creditor could not recover a debt, though really lent, notwithstanding the existence of an attested writing in any irregular form, there would be a failure of justice on the part of the king. Again; if the instrument were not subscribed by witnesses, but it be said by a witness, "I know this instrument," and the instrument be admitted in evidence by the arbitrators on any arguments; it is an attested instrument. This is mentioned by the way; the rest may be learnt under the title of judicial procedure: but something has been said, in this place, to make known the sort of writing, by which a moneyed man, who advances a loan, may be secure from losing his cause, should a dispute afterwards arise. This we deem reasonable.

"BEFORE credible witnesses" (XI); this is another case of written agreements: for the presence of witnesses is suggested by the form for drawing written contracts: and the sense of the text appears to be this; he should advance a loan on receiving a pledge to be used by him, together with a written agreement; this is one case. He should advance it on receiving such a pledge before credible witnesses; this forms a second case. So likewise a loan, made on a pledge to be merely kept in his hands, forms two cases (*according as it is transacted by a written agreement, or before credible witnesses*): hence arise four cases. Again; two cases arise also on loans made with a sufficient surety; and the possible cases are six in number. Alluding to this, **MISRA** has said;

said ; “ any of these, by which confidence may be *given*, should be furnished.” Consequently any one of these six modes, by which confidence may be given to the lender, should be adopted. Here a pledge to be used or merely kept, as well as a surety, are intended to give confidence to the lender ; and the writing and witnesses, to prove the truth of the loan, if a judicial proceeding be held at a subsequent time.

## XXII.

NA' REDA:—IN this *contract* there are two things which give confidence to the lender, a pledge and a surety ; and two, which afford clear evidence, a writing and attestation.

“ CONFIDENCE ;” assured expectation of thereafter receiving the loan advanced : in some instances a surety, in others a pledge, give such confidence ; for this coincides with the former text (XI). But here the word pledge (*ādhi*) signifies both a pledge to be used and one to be kept. “ Clear evidence ;” certain proof : sometimes a writing, sometimes attestation, sometimes both, are required, according to circumstances, for the sake of proof in case of dispute.

It should be here noticed, that both texts (XI and XXII) are ethical precepts ; for they exhibit causes of present evil. If, therefore, infringing these rules, a man deliver a loan without a pledge, or writing, or the like, he violates not his duty : and, if the debt be any how proved, the debtor shall be compelled by the king to repay it to his creditor. Hence the practice of advancing loans, without pledge or writing, in some instances of extreme confidence. But excessive confidence should be no where reposed, for the *Hervanfa* directs, “ Place not confidence in what is unworthy of confidence, nor excessive confidence even in what is worthy of confidence :” and the adage expresses, “ mutable mind, mutable wealth.”

IN like manner the texts of CA' TYA' YANA and NA' REDA\* (VIII and X) are ethical precepts ; for the text points out a present evil, “ the lender can-

\* “ It is not expressed in the original, which is the second text alluded to : I supply it from conjecture.



not *in general recover* &c." Consequently there is no breach of duty in lending any thing even to women, on the contrary, it is a duty to support unprotected persons, even though it be done by advancing loans: and, if the debtor be able to discharge it, the king should enforce payment of such a debt. But a man, who infringes the rule and institutes a suit *on such a debt*, incurs censure. To enlarge would be vain.

Thus a loan should not be advanced *by a moneylender*, without confidence and means of proof: and the meaning of the phrase, "in what form a loan should not be made," becomes evident.

## CHAPTER II.

## ON INTEREST.

## SECTION I.

## ON LEGAL INTEREST IN GENERAL.

SUCH interest, as may be taken without a breach of duty on the part of the creditor, is a rule (*dberma*) for delivery *by the creditor*. Or the nature of a thing may be signified by the word *dberma*: as it is the nature of robbers to hurt living creatures, so it is the nature of a loan, that it should produce to the lender the principal sum advanced, and interest in addition thereto. Thus interest is signified by the term rule for delivery. MENU propounds that interest.

## XXIII.

MENU: — A LENDER *of money* may take, in addition to his capital, the interest allowed by VAS'ISHT'HA, an eightieth part of a hundred by the month.

“ ALLOWED or declared by VAS'ISHT'HA ;” this shows that it has been authorized by VAS'ISHT'HA. Thus, such interest is allowed by all sages, and is therefore legal: by taking it a man does not violate his duty. “ In addition to his capital,” actually increasing the creditor's capital, or calculated to do so: *such interest* he may require. But if it be explained, “ increasing the debtor's capital,” *the sense is*, through the medium of moral worth: by discharging the debt with interest, immoral conduct is avoided,

and increase of moral worth attained, hence wealth is *also* increased. The purport is, that the moneylender may actually receive such interest, for CULLŪCABHATTA expounds it, "one, who subsists by interest, may take &c." It might also signify, "a loan may produce the interest allowed by VAŚISHTHA &c." and it is also expounded, "a borrower may pay the interest allowed by VAŚISHTHA."

WHAT is that interest? The sage propounds it, "an eightieth part of a hundred by the month. The principal should therefore be divided into eighty parts; and so much as is the quantity of one part, he may take in the same kind of wealth, by way of interest, in addition to the principal. If, therefore, a loan, amounting to one hundred *suvernas*, be divided into eighty parts, one part contains a *suverna* and a quarter, and the interest in this case is one *suverna* and a quarter. "By the month," at the end of the month

It is said by some lawyers, that, a hundred being specified in the text, an eightieth part is the rate of interest then only, when the loan amounts to a hundred. Hence it appears, that the rate of interest varies when the loan is more or less, and such a practice is observable in some countries. On this we remark, that no special rate of interest for loans exceeding a hundred, or falling short of a hundred, has been recorded by any sage. MENU has not specified whether it be a hundred shells or a hundred *suvernas*, and we shall explain, in its proper place, the text of HĀRĪTA (XXX) as intending the rate of two in a hundred. But here we consider "a hundred" as a mere example, the rate is the same on less sums. VAŚISHTHA expressly declares the rate of an eightieth part on less than a hundred.

#### XXIV

VAŚISHTHA.—HEAR the interest for a moneylender declared by the words of VAŚISHTHA five *mas*has, or one *suverna*, for twenty *palas*, or eighty *suvernas*, he may claim and should receive each month thus the law is not violated.

#### XXV

GŌTAMA:—THE legal interest for twenty *palas* is five *mas*has a month:

ON this'some remark, that the *māṣha* is declared by MĒNU to contain five *crīṣṇalas* or *raṭṭicās*, (" five *crīṣṇalas* are one *māṣha*, and sixteen such *māṣhas*, one *suverna* ;") and the same *māṣha* is thus explained by AMĒRA, " the first *māṣha* contains five seeds of the *gunjā*". Consequently five *māṣhas* are equal to twenty five *raṭṭicās* ; and this is the rate of interest on a loan amounting to twenty : such is the ascertained sense. On the question " twenty of what denomination ?" the *suverna*, which is mentioned after stating the quantity of a *māṣha*, both in the text of MĒNU and in that of YĀJÑYAWALKYA, should be taken, (" five such *crīṣṇalas* are a *māṣha*, and sixteen such *māṣhas*, a *suverna* ;") for five *māṣhas* can only be the interest on twenty such *suvernas*. Thus a *suverna*, consisting of sixteen *māṣhas*, contains eighty *raṭṭicās* ; its eightieth part is one *raṭṭicā*, and the eightieth part of twenty *suvernas* is twenty *raṭṭicās*. Twenty-five *raṭṭicās* are intended by the rate of five *māṣhas* (XXIV and XXV). Consequently an eightieth part is only the rate of interest on a debt amounting to a hundred *suvernas* ; but on a smaller debt, the rate of interest is higher. This is intended by VASĪSHṬ'HA and GŌTAMA, and such, it may be argued, is the legal rate on fifty or sixty *suvernas*, or the like ; and practice is observed to conform thereto. How then is it said, ' the rate of interest on less sums has not been recorded by any sage ?' And why is it said, ' VASĪSHṬ'HA expressly declares the rate of an eightieth part on less than a hundred ?'

reconciled: the *māṣa*, containing five *crīṣṇalas*, as stated by MENU and YĀJNYAWALKYA, must not be taken (for it is not applicable); but the *māṣa* stated by VRĪHASPATI as quoted in the *Retnācara* and *Glntāmni*, “a *māṣa* is considered as the twentieth part of a *pala*.” Thus the twentieth part of a *suverna* containing eighty *raṣṭicās* is equal to four *raṣṭicās*; and the twentieth part of a *pala* containing four *suvernas* is certainly equal to sixteen *raṣṭicās*; and those make one *māṣa*; five of these are equal to eighty *raṣṭicās* or one *suverna*. Thus there is no inconsistency. Here *suverna* is of the masculine gender; for it is so employed by MENU and YĀJNYAWALKYA, and is so exhibited in the same sense by AMERA; but, in the sense of gold generally, it is of the neuter gender, for AMERA so exhibits it in this sense.

THE same should be also understood of other things. The monthly interest on a *purāna* is thus explained: a *pana* consists of eighty shells, and a *pana* is the quantity of a *carṣa* of copper, as mentioned by MENU; “but a *carṣa* (or eighty *raṣṭicās*) of copper is called a *pana*.” The *carṣa* is the fourth part of a legal *pala*; hence expositors say, a *pala* contains four *carṣas*. Consequently the weight of eighty *raṣṭicās* of copper is a *pana*; on this ground, the ancients established it also at the value of eighty shells; accordingly it is familiar in practice, that eighty shells make a *pana*. A *purāna* contains sixteen *panas*, according to the *Retnācara*; and *purāna* is also practically noticed, for sixteen *panas* of shells, in penances and expiations, and on other occasions. Now the eightieth part of a *pana* is one shell; of a *purāna*, sixteen shells; of a hundred *panas*, a hundred shells or one *pana* and a quarter; of a hundred *purānas*, sixteen hundred shells, or twenty *panas*. Or if the money be in silver coins stamped with legends, the interest on a hundred such coins is one coin and a quarter: for, on eighty pieces, it is one piece; and, on twenty pieces, a quarter; which, added together, make one piece and a quarter. But, if the principal be a single piece of money, the rate must be settled by its value. If its value be four *purānas*, then sixty-four shells are its eightieth part; and so in all cases.

AGAIN; if the debt consist of kine or the like, the interest should be settled on the value. It should not be affirmed, that they cannot constitute a debt; for the limit of interest on cattle is mentioned (LXV). Why such a prac-

tice does not occur, we know not. Something, however, may be mentioned to explain the *received* distinctions in *these cases*. If a man happen to deliver a cow or the like as a loan, the interest may be received on her value; *but* a great offence is committed, for the sale of a cow is forbidden in moral law: however, a goat, a calf, or the like, may be taken by way of interest, without any offence on the part of the receiver, and the debt should be discharged by returning the thing itself or something of the same nature; as already stated by MISRA. But, in this case, it should be returned unblemished, or another cow, or the like, or other thing of equal value, should be delivered. Whatever it is forbidden to sell and give away, should not be delivered as a loan, for the offence is equal. But a *Brāhmana* may advance lac, salt or the like, by way of loan, for there is no more offence in lending, than in giving those things, and the offence is restricted to the sale of such things. however, at the time of repayment, the value of the salt or the like, and of interest accruing on it, should not be received, for *that would equal* the offence of selling it. The interest should be of the same nature with the thing lent, for interest is propounded at the eightieth part of the thing lent.

To revert to the explanation of both texts (XXIV and XXV), the institutes of VASISHTHA and others were composed by their pupils, who heard the purport of what they record, from the mouth of VASISHTHA and the rest - hence it is said (XXIV), "declared by the words of VASISHTHA," as in the ordinances of MENU, it is said, "MENU ordained"

"LEGAL," in the text of GŌTAMA (XXV), signifies justifiable in law, that is, not illegal, for it coincides with the expression, in the text of VASISHTHA, "thus the law is not violated" (XXIV). Or the sense may be this, he, who takes interest allowed by codes of law, which may produce religious merit by means of pious oblations made therefrom to Deities and *Brāhmanas* and so forth, has the complete benefit thereof, if he actually do make such oblations to deities and priests, not so, he, who celebrates rites with wealth acquired by theft or by other nefarious means. As is declared by

\* MENU:—NEITHER a priest nor a military man, though distressed, must receive interest on loans; but each of them, if he please, may pay the small interest permitted by law, on borrowing for some pious use, to the sinful man, who demands it.\*

WHICH is expounded by GULLŪCABHATTA, "may advance a loan on small interest, for some pious use."

"LEGAL interest" (XXV), interest authorized by law, at the rate of five *māśhas* for twenty *palas*

The *Retnācara*

WE expound the text (XIV), "the quantity of five *māśhas* is the interest for twenty *palas*," or interest appertaining to twenty *palas* (supplying the word "*pala*" by a secondary sense of "twenty"), that interest accrues on a sum of twenty *palas*. But some read "twenty" in the fifth or sixth case (instead of *vinśati*) That is wrong, for it is not approved in the *Retnācara*. The sense, according to regular construction, is thus, "the quantity of five *māśhas*, as interest appertaining to twenty *palas*, is legal."

"A MONTH", here "for" must be supplied. In every text, where "month" is not specified, but interest at the rate of an eightieth part or the like is mentioned, the word "month" must be understood and the month is according to *śukla* time, consisting of thirty days and nights, not the *śukla* month from the sun's departure from one sign to his departure from another sign. For RAGHUNANDANA, in commenting on texts quoted in the *Mula nīsa tatva*, ("certain sacrifices and acts of devotion are to be regulated by *śukla* time, so is impurity after childbirth and the like, and so are all popular and forensic transactions") says, that under the term, "and the like," wages, interest and the like should be compre-

\* Chapter 10 v 117. I do not alter the translation, which conforms to the literal sense of the text, though it conflict not with the comment and the purpose of the quotation. See Book II, Chapter IV. v XXIII

† VYASA in the *Vijñāna dharmasāra*

hended. Hence it is inconsistent with law to regulate civil contracts by *saura* or solar time. It would be a great disparity, were a *whole month's* interest, at the rate of an eightieth part or the like, paid upon a loan taken on the last day of the sun's passage through one sign, and repaid on the following day; and no interest paid on a debt contracted on the first day of *the solar month*, and discharged on the last day of the same month. This should be determined by the wise.

HERE interest for one month is declared by sages to be the eightieth part of the principal; but if the period exceed one month, the same rate is directed for each month: since the expression implies repetition, it follows that the interest shall be an eightieth part for every month respectively: and, if the period be less than a month, it appears, that the interest should be computed by a subdivision of that rate: else a disparity would arise, no interest being payable on a debt discharged within one day of a complete month.

A GREATER or less fine, or other *decision*, should not be regulated by very minute distinctions.

BUT some attend in practice even to minute variations in fines *and the like*.

## XXVI.

VRĪHASPATI, quoted in the *Retnācara*:—THE eightieth part accrues *monthly on the principal*; and, if the interest be received, the loan is doubtless doubled in a third of a year less than seven years; that is, in *six years and eight months*.

"ACCRUES," it is the interest for each month. If the interest be received, the loan advanced is doubled. Or the seventh case may be here used in the sense of the third, "the debt is doubled by accumulation of interest." In what time? The sage replies to this question, "in a third of a year less than seven years." Divide a year of twelve months into three parts; each part contains four months; that, deducted from seven years, leaves six  
years



years and eight months. Thus, if the debt amount to one hundred *suvernas*, the monthly interest is one *suverna* and a quarter, the annual interest is twelve *suvernas* and twelve quarters or fifteen *suvernas*, the interest in three years amounts to forty-five *suvernas*, in six years, to twice that sum or ninety *suvernas*. Interest for eight months is eight *suvernas* and eight quarters, or ten *suvernas*, which added to ninety *suvernas*, make a hundred, or the same amount with the original debt. Consequently, added to the principal sum, it doubles it. This is mentioned by VRĪHASPATI to prohibit further interest after a loan in gold, silver, or the like, has been doubled by interest. This will become evident under the title of limited interest.

THIS rate of interest is ordained if a pledge be given, VYĀSA propounds a distinction if a surety be given without a pledge, or if neither be given.

## XXVII .

VYĀSA.—MONTHLY interest is declared to be an eightieth part of the principal, if a pledge be given, an eighth part is added, if there be *only* a surety, and if there be neither pledge nor surety, two in the hundred *may be taken from a debtor of the sacerdotal class*.

“ An eightieth part,” the eightieth

The *Retnācara*

THAT is, one part in eighty parts. Here a pledge intends a pledge to be kept, for in a gloss on the text previously quoted from MENU (XXIII) to the same purport with this text, the *Retnācara* states “ this concerns a pledge to be merely kept.” The meaning is this, in the case of a pledge to be used, since the use of the pledge is the only interest, the rate of an eightieth or the like is inapplicable. All this will be explained under the title of various sorts of interest.

A PLEDGE to be kept is one, which would be impaired by use, a pledge to be used is one, which is not *necessarily* impaired by use. Here it should be noticed, that, if a man contract a debt, mortgaging land or the like to  
be

be used, and say, " the use of the land shall be the only interest," in that case, since there is no other interest but the use of the pledge, the rate of an eightieth part or the like is inapplicable. But if he say, " this land is mortgaged to you, paying your interest from its produce, I shall discharge the principal from the surplus, or, if the produce be insufficient, I will make good the interest, delivering other money or goods, in that case the rate of an eightieth part is applicable even to a pledge to be used

Is it not the law, that, when land or the like is hypothecated, the entire use of it should of course be taken by way of interest? On the contrary, usufruct in excess is reprehended by a text, which will be quoted from VRĪHASPATI (XXXV 7). It should not be argued, that a pledge delivered for use is a pledge to be used, and one delivered merely for security is a pledge to be kept. The forfeiture of the whole interest will be denounced against the unauthorized use of a pledge to be kept, and the forfeiture of half the interest, against the unauthorized use of a pledge to be used. It is said in the *Dipacalica*, " if a pledge to be kept, that is, one which should be securely preserved, as clothes ornaments and the like, be used, no interest shall be received." It is not said, " a pledge to be kept, that is, one not delivered for use," but, " a pledge to be preserved, as clothes, ornaments and the like." The proper place for this disquisition is the chapter on pledges. Since many texts are there cited to expatiate in this place would be idle

" An eighth part is added" (XXVII) and that is an eighth part added to an eightieth part. Hence, two *panas* less than two *puranas*, or one *purana* and fourteen *panas*, are received, if there be only a surety

The *Retnacara*

ever be the amount of an eightieth part, eight parts are half of that amount. But, in this case, an eightieth part is twenty *panas*, and these added to half that amount make thirty *panas*, or two *panas* less than two *puranas*

BUT some, noticing another reading in the commentary on YAJNYAWALKYA, *śaśti h bhaga* instead of *śaśtibhaga*, say, the interest should be a sixtieth part, if there be only a surety and this, they say, is fit. If there be neither pledge nor surety, the interest is two *puranas* for a hundred *puranas*, as ordained by the text (XXVII). If a pledge be given, twenty *panas* are the interest prescribed. But in this case, a pledge having been given, the confidence is greater, for a chattel of equal value is in the creditor's power. If there be neither pledge nor surety, no confidence exists, for payment rests on the will of the debtor. In this last case, therefore, the interest ordained by śages for a hundred *puranas*, is greater by twelve *panas* and this is consistent with the reason of the law. Now, if there be only a surety, confidence is given, but there is a possibility of trouble. For instance, a man advances a loan on this consideration, "if my debtor do not repay the loan, even then I shall subsequently recover it from his surety by a suit at law," in that case trouble *may be apprehended*, for the recovery is effected by the trouble of litigation. It is therefore proper, in such a case, to take, in addition to the twenty *panas* allowed where a pledge is given, six *panas*, or half the additional twelve *panas* allowed on loans *without security*. Now this nearly agrees with the rate of a sixtieth part. In dividing a hundred *puranas* into sixty parts, first take one *purana* for each part, this disposes of sixty *puranas*, and forty *puranas* remain. Again set half a *purana* towards each part, thirty *puranas* are disposed of, and ten *puranas* remain, and each part is one *purana* and a half *with a further fraction from the remainder*. Reduce the ten *puranas* into *panas*, the result is a hundred and sixty *panas*. Setting two *panas* to each part, the portions amount to one *purana* and ten *panas*, a hundred and twenty *panas* are disposed of, and forty *panas* remain. Again set half a *pana* to each portion, thirty *panas* are disposed of, the sixtieth part amounts to one *purana* and ten *panas* and a half, *with a further fraction* and there remain ten *panas*, or eight hundred *cauries*. Distribute thirteen *cauries* to each share, seven hundred and eighty *cauries* are disposed of, and the sixtieth part of a hundred *puranas* amounts

to one *purāna*, ten *panas* and fifty-three shells, with a fraction of one third from the remaining twenty shells, which may be *more accurately* divided by those, who are skilled in the notation taught by SUBHANCARA. The amount of fifty-three shells and a third is, they say, but a small excess above the rate of interest, which, in their opinion, is reasonable, neglecting therefore minute differences, interest may be taken at the rate ordained by the sage, namely a sixtieth of the principal, if there be only a surety.

VĀCHESPATI MISRA, not acquiescing in either of these interpretations, expounds the text otherwise in his digest. "An eighth part is added," the eighth part of an eightieth part is added to an eightieth part. Hence the interest, on the sum of twenty *palas* of gold, is ninety *raśikas*. His meaning is this, *śaṣṭhabhāga* signifies joined to one part in eight parts. *The answer* to the question, "part of what?" is drawn from the nearest term, "an eighth part of an eightieth." Thus, an eightieth being divided into eight parts, one such part is added. But the interest at an eightieth part of the principal is ascertained in the case proposed, the eightieth part of twenty *palas* or eighty *suvernas* is equal to eighty *raśikas* or one *suverna*; to which the eighth part of it, or, ten *raśikas*, being added, the result is ninety *raśikas*. According to this exposition, twenty *panas*, which are the eightieth part of a hundred *puranas*, added to the eighth of that or two *panas* and a half, make twenty-two *panas* and a half, *the rate of interest on a hundred puranas, if there be only a surety* and the same method should be practised in the case of silver coins and the like. On this opinion also, we do not discover why the letter M occurs in the gloss (*Aṣṭamenabbāgena*).

A THOROUGH examination of these opinions, to select the best, must depend on the mental faculties of intelligent *inquirers*. On what proof or argument it is held, according to the opinion delivered in the *Retnacara*, that the portion not specified is a sixteenth, must remain a question. The other reading (a sixtieth part) is not admitted in the *Retnacara* nor in the *Cbintāmenī*; for in both the text is thus explained, "an eighth part is added." and in the commentary on *YAJNYAVALKYA*, where this reading occurs, the text is not expounded. Whether the cerebral S be not an error of the copyist, is a question on the second interpretation. On MISRA's exposition the ques-

tion is, how the interest, where a surety only is given, should so little exceed the rate of interest, where a pledge is given.

“ If there be a surety ;” the sense is, if there be only a surety ; for higher interest would be improper if there were both a surety and a pledge.

“ If there be neither pledge nor surety (*nirādbānt*) ;” here the word *ādbānta* signifies both pledge and surety ; hence, if there be neither surety nor pledge, two *purāṇas* are received on a hundred.

The *Retnācara*.

THE derivation of the word is, “ what is placed (*ādbīyatē*) for the sake of taking up a loan ;” \* and that description is applicable both to a pledge and a surety. The privation of both sorts of security is *nirādhāna*, want of pledge and surety. Or the word *ādhāna* may be restricted to pledges : thus, because an eighth part is directed to be added, if there be no pledge but a surety *only*, therefore by the regular form for general rules and exceptions to those rules, the remainder of the text relates to a different case of loans without a pledge ; that is, one without pledge or surety. Ultimately there is not, in our opinion, any difference.

for payment, and for delivery: The servant's master does not say, " I will produce this man if he abscond ;" nor, " that man is trust-worthy, and will not be averse from repaying a loan received ;" neither does he say, " if the debt be not discharged by him, I will make good the sum ;" nor " I will recover the amount from him and discharge the debt " How then can he be a surety ? This debt must consequently be one, for which there is neither pledge nor surety ; this again is not true in reasoning ; for there is a motive of confidence. On this proposed case it is said, this is a debt for which a surety is given : although the servant's master is not positively comprehended in the four descriptions of sureties, yet, as that enumeration is a mere illustration, it must be admitted that such a person is a surety ; and if the servant's master break his own promise, he must discharge the debt. The interest should therefore be an eighth part added to an eightieth. Or the wages may be considered as a pledge. In that case the debtor's assent is given to the hypothecation ; and a declaration being made by the debtor to that effect, the servant's master is certainly surety for delivery of the pledge, not for payment of the debt : *but*, although there be no promise of payment, there is a lien on the *promised* delivery of the pledge ; and a lien prevents seizure by any other creditor. The interest, therefore, should in this case be one eightieth part only of the principal. But, if he do not perform his work, then, no wages being earned, how is the debt discharged ? To this it is answered ; does the servant's master dismiss him without a fault ? If so, the servant's master is amenable : the servant being faultless, and the master needing another servant, this servant should not be dismissed ; for his dismissal could only originate in malice. This is consistent with reason. But, if the servant were faulty, his master would not be amenable *for dismissing him* : and, when his dismissal takes place, the debt should be paid with interest, or a new pledge be given ; for this case is the case of a pledge destroyed by the act of God (Cl. &c). But, if the servant desert his master without provocation, in that case, a surety must certainly be given, if he cannot immediately discharge the debt nor give another pledge ; or, on failure thereof, the debt from that day becomes a debt unsecured by a pledge, and bears interest at the rate of two in the hundred. A man received a loan on the mortgage of a piece of land pointed out by him in this form, " I will pay thee from the produce of the present year ; the produce

of this land is thy pledge." This debtor meditated a fraud, and gave no attention to culture, reflecting, "the produce of this land is my creditor's only; no benefit will arise to me from it: if no produce be obtained, what can the creditor do?" As in this case chastisement is proper, and interest should be computed at the rate of two in the hundred from the day when he neglected the culture of the land; so, in the case supposed, where the servant quits an unoffending master, thinking labour vain, *which is undergone* for the sole purpose of discharging his debt, we hold it reasonable, that he should incur punishment. So long as he performs work, his wages for that period belong to the creditor, and no other person; because those wages are pledged to that creditor: and this pledge falls under the description of a pledge to be kept. After the undertaking supposed, if the servant's master also advance him a loan on any terms, and he only perform service for a short time, so that both cannot be paid out of his wages; what is the rule of decision in that case? The apparent difficulty may be reconciled in the same manner, with the case where a man, renting land for cultivation from one person, contracts a debt to another, and subsequently receives a loan also from his landlord, both which debts cannot be paid from the produce of that land. Half of the grain produced both from the use of land and by corporal labour belongs to the owner of the land, half to the husbandman. In this case the husbandman's share, not yet gathered, is pledged to one person; but no act, amounting to hypothecation, has been done by the owner of the land: hence, the produce may be taken by the first creditor, but the landlord retains in his power the grain produced from his own land, until his own demand be satisfied. Such is the practice in some instances. It cannot be asserted as a maxim, that the land must of course be left another year in his tillage, and that the debt may be paid from the produce of the following year. Since his tillage may be found defective, or he may be detected in knavery or the like, his tillage does not continue without the consent of the landlord. Thus and other inferences may be drawn from reasoning.

## XXVIII.

YA'JNYAWALKYA:—AN eightieth part of the principal is the monthly interest, when a pledge has been delivered: otherwise,

otherwise, it may be, in the direct order of the classes, two, three, four, or five in the hundred.

“ OTHERWISE,” in cases other than that of a pledge delivered; that is, when no pledge has been given. Since the text has the same tenour with that of VYASA (XXVII), it must be also understood, that no surety was given. For a debt of one hundred *suvernas*, two *suvernas* should be paid to a *Brabmana*, three *suvernas*, to a *Cshatriya*; four *suvernas*, to a *Vaisya*; five *suvernas*, to a *Sudia*.

## XXIX.

MENU —If he have no pledge, a lender of money may take two in the hundred by the month, remembering the duty of good men. for by thus taking two in the hundred, he becomes not a sinner for gain.

2. HE may thus take, in proportion to the risk, and in the direct order of the classes, two in the hundred from a priest, three from a soldier, four from a merchant, and five from a mechanick or servile man, but never more, as interest by the month.

“ OF good men,” reflecting that such is the duty of good men.

CULLU CABHATTA.

“ TWO in the hundred” (XXIX 1), this concerns a *Brāhmana*. In answer to the question, what is the rate for other tribes, he repeats the interest payable by priests, and declares the rates for other classes (XXIX 2).

“ BUT never more” (*samam*), literally, uniformly or equally that is, neither more nor less.

CULLU CABHATTA.

BUT we hold, that “equally” is expressed for the purpose of showing that, as a priest becomes not a sinner for gain (that is, does not contract the sinful



sinful taint arising from the *undue* receipt of money) by taking two in the hundred, so a soldier, who takes three in the hundred, is not a sinner for gain

THUS according to CULLŪCABHATTA, CHANDESWARA, BHAVADĒVA, VAČHESPATI MISRA, and others, an eightieth part of the *principal* is the *monthly* interest, when a pledge is delivered, but two in the hundred, if there be no pledge

THE *Mēdātṭibī* and GŌVINDA RĀJA expound the text of MENU (XXIX), ' If a man, in distress, cannot provide for his wants on the interest first mentioned, he may take two in the hundred or the like ' For the text of YĀJNYAWALKYA (XXVIII) solely concerns loans secured by a pledge, and there is no objection to this explanation of the word " otherwise," in a case other than that of a man, who can provide for his wants, as implied in the former part of the text, that is, where he cannot do so Here it may be questioned, what should be the application of the text of VYĀSA (XXVII), if for a pledge is there signified by the word *adbana* Although the text might be well applied by any how explaining it " provision for wants," yet there would be no determined rate, when no pledge is delivered - if the rate were the same for loans with or without a pledge, the expressions, in the texts of YĀJNYAWALKYA and VYĀSA, " when a pledge has been delivered," and, " if a pledge be given," would be unmeaning But the receipt of two in the hundred and the like is authorized by the *Mēdātṭibī* and other commentaries, on the authority of the phrase, " he becomes not a sinner for gain" (XXIX) which they apply to the case of utmost distress, for the purpose of obviating the doubt, whether a man become a sinner by taking two in the hundred The case of absolute inability to provide for wants might exist, as well as the case of a loan unsecured by a pledge as stated by YĀJNYAWALKYA However this *exposition* should not be admitted, because it is disapproved by CHANDESWARA, VAČHESPATI MISRA, BHAVADĒVA, and many other authors To expatiate would be vain

On the subject of loans without a pledge the following text propounds a rule

## XXX.

**HARITA:**—FOR twenty five *purānas* (or four hundred *panas*) of copper, lent without either pledge or surety, the interest may be eight *panas* a month; and the principal, being doubled in four years and two months, bears interest no longer: such interest is legal; and the lender violates no duty by taking it.

“ BEING doubled;” becoming two fold: and the interest is therefore two in the hundred by the month. “ Bears interest no longer;” interest ceases.

The *Retnācara*.

INTEREST is settled at rates varying in the order of classes, on loans made without receiving a pledge. By parity of reasoning, different rates should be also inferred, in the order of the classes, when a pledge or surety is given. As is directed by VAĀCHESPATI, ‘ interest should also be similarly regulated, in the order of the classes, on loans secured by a pledge and the like.’

Does the order of the classes relate to the borrower or lender? CHANDĒSWARA holds, that it relates to the debtor, for he says, ‘ both these texts concern a *Brāhmīna* contracting debts;’ and again, ‘ he may receive interest at these rates from a priest, a soldier, a merchant, and a mechanic respectively ’ and this is consistent, for it is expressed in the text of MENU, “ He may thus take, in the order of the classes, (from *Brāhmanas* and the rest) two in the hundred and so forth,” and there is no difficulty in explaining the text of VISHNU (XXXI), “ may receive from his debtor, in the direct order of all the classes, two in the hundred and so forth.”

## XXXI.

**VISHNU:**—BUT a creditor may receive interest at due rates from his debtor, or may take from him, in the direct order of all the classes, two, three, four, or five in the hundred by the month.

THE sense of the text is as follows " at due rates," an eightieth part of the principal, or an eighth added to an eightieth such a proportion he may take by way of interest In regard to loans without pledge or surety, the sage adds, " two, three, four, or five in the hundred &c "

VIJNYĀNĒŚVARA also holds, that the order of the classes respects the borrower But, in VĀCHESPATI MISRA's opinion, it respects the lender; accordingly he says, " A *Vaiśya* infringes no duty by taking interest at the rates prescribed in this text of MENU, and in other places, nor do *Brahmanas* and the rest *infringe any duty*, by doing so in a person of distress " Here stating generally, that a *Vaiśya* infringes no duty, he adds, " nor *Brahmanas* and the rest, in a person of distress " since there is no other term in that phrase to which the words can be referred, the meaning of what he says, is this, " a *Vaiśya*, in all circumstances, and *Brahmanas* and the rest, in distress, infringe no duty by taking *such interest*." What is the sense of MENU's text, consistently with this opinion? *It is as follows* " In the direct order of the classes," according to the order of the class, to which he belongs, the lender may take, &c. We think, the order of classes should be considered as relating both to the lender and borrower, on the authority of both commentators, CHANDĒSWARA and VĀCHESPATI Thus the contemplative Sage

### XXXII

YĀJNYAWALKYA ordains -- ALL borrowers, who travel through vast forests may pay ten, and such, as traverse the ocean, twenty in the hundred to lenders of all classes, according to circumstances, or whatever interest has been stipulated by them, as the price of the risk to the lender.

OR whatever interest has been stipulated by them, all borrowers should pay to lenders of all classes Those, who travel by difficult roads, or traverse the ocean, for the sake of commerce, should pay ten *paras*, or twenty *paras* respectively, on the hundred *paras*, if no pledge have been given Greater interest is paid on account of the risk of losing the principal

SCĒLAPĀNI in the *Dhīkalikā*

BUT, if there be a pledge or surety, the interest should not exceed the rates prescribed, for there is not such a risk of losing the principal. "Ten Panas;" the meaning is, a lender may take one part in ten.

THE sage declares an alternative in respect of the prescribed rates of two and three in the hundred, and the like; "or whatever interest has been stipulated by them."

The *Dīpācalikā*.

ALL borrowers, *Brāhmanas* as well as others, should pay to lenders of all classes, *Brāhmanas* as well as others, whatever interest has been stipulated by them. Whether a pledge have been delivered or not, they must pay the the interest, which has been promised by them in this form, "this interest shall be paid by me."

CHANDĒSWARA reads *śwaeritām*, stipulated by the borrower himself. BHAVADĒVA reads *śucritām*, which he explains, "allowed by all sages, namely, the eightieth part of the principal and the like." According to CHANDĒSWARA, this interest falls under the description of *cāritā*, or interest stipulated by the borrower. But according to BHAVADĒVA the two cases may be reconciled by referring them to circumstances, in which a lender can or cannot, *part with his money on the terms generally prescribed*. CHANDĒSWARA's interpretation should be admitted, for his reading is approved by VIJNYĀNĒSWARA and SŪLAPAṆI.

IF the order of classes were referred to the borrower only, interest not varying on loans made by persons of the several classes, there would be no purpose in saying, "to lenders of all classes" (XXXII). If it be referred to the lender only, interest not varying on debts contracted by persons of the several classes, there would be no purpose in saying, "all borrowers" (XXXII). It should not be argued, that the expression, "all borrowers," intends all, whether traversing the ocean or not, and so forth. This would be inconsistent with the mode in which the text is cited; "the sage declares an alternative in respect to the prescribed rates of two and three in the hundred and the like." Accordingly MISRA also, in his gloss on the text of

CĀTYĀYANA

CAṬYĀYANA (LVI), says, " after the lapse of six months, interest should be paid by a *Sūdra* at the rate of five in the hundred." Since otherwise he must contradict himself, it should be understood, as the opinion of VĀCHESPATI MISRA, that the order of classes relates both to the lender and borrower.

## XXXIII.

MENU:—WHATEVER interest, or *price of the risk*, shall be settled *between the parties*, by men, well acquainted with sea voyages or journeys by land, with times and with places, such interest shall have legal force.

Is not this text of MENU incompatible with the text of YĀJNYAWALKYA (XXXII)? For the text of MENU is fully explained in the *Retnācāra*. " Men well acquainted with sea voyages;" mentioned merely as an instance suggesting a trader in general: " With times and with places;" who see, that so much is the profit at such a place: " Legal force;" adjudication: therefore such interest should in such a case be adjudged. It is evident from the purport, since the term used in the text is explained adjudication, that the interest should be regulated according to the time, place and thing; the commentator says as much, by adding " such interest should be adjudged:" the payment of ten and twenty in the hundred is, therefore, inconsistent with the obligation to pay the interest settled by men trafficking by sea, and the like. It should not be affirmed: the text of YĀJNYAWALKYA should be considered as applicable to the case where no specific rate of interest has been settled. VĀCHESPATI, in his gloss on the text of MENU (XXXIII), says, " they settle greater interest, expecting large profit from traversing the ocean." Alluding to this, HĀRĪTA says, some allow interest at the rate of a *pana* for a *purāna*.

## XXXIV.

HĀRĪTA:—SOME allow a *pana* each month for one *purāna*, or a *sixteenth of the principal*.

BUT CUANDĒSWARA says, this text (XXXIV) concerns a borrower of

a mixed class. That may be questioned, for, the text being explained by referring it to traders by sea, it is useless to extend it to borrowers of a mixed class, and no sage has propounded a higher rate of interest payable by mixed classes

## SECTION II.

## ON SPECIAL FORMS OF INTEREST.

## XXXV.

VRĪHASPATI:—LEARN, from their properties, the various sorts of interest declared to be four; or according to some, five; and according to others, six;

2. *Cáyicá*, corporal; *cálicá*, periodical; *chacravṛiddhi*, compound interest; *carivá*, stipulated; *śic'hávṛiddhi*, daily interest; and *bhógalábha*, interest by enjoyment.
3. *Cáyicá* is connected with (*cáyá*) the body of a pledged animal; *cálicá* is due monthly; interest upon interest is *chacravṛiddhi*; and interest stipulated by the borrower is *carivá*.
4. WHEN interest is received at the close of each day, it is called *śic'hávṛiddhi* or hair-interest; because it grows daily, like hair, which can only cease growing on the loss of the head;
5. THUS the daily interest can only cease by the payment of the principal, and hence it is called *śic'hávṛiddhi* the rent or use and occupation of a pledged house, or the produce of a pledged field, is called *bhógalábha*, interest by enjoyment.
6. INTEREST payable at the close of each day, and *cáyicá*, or interest accruing from a pledged body, as well as interest by enjoyment, the creditor shall receive entire, so long as the principal remain unpaid
7. But the use of a pledge after twice the principal has been realized

## XXXVIII.\*

YĀJNYAWALCYA: — INTEREST on interest is *chacravriddhi*; monthly interest is named *cālicā*; that, which is stipulated by the party himself, is *cāritā*; but *cāyicā* accrues from the body of a pledged quadruped.

2. A DEBT, secured *merely* by a written contract, shall be discharged, *from a moral and religious obligation*, only by three persons, *the debtor, his son, and his son's son*; but a pledge shall be enjoyed until actual payment of the debt *by any heir in any degree*.

## XXXIX.

VYĀSA: — THAT interest is called *cāyicā*, which arises from (*cāyā*) the body of a *pledged* female quadruped to be milked, or a male animal to work or carry burdens.

## XL.

GŌTAMA: — SOME hold, that no lender *should receive* interest beyond the year.

A RULE, says MISRA, *abridged from the following text of MENU.*

## XLI.

MENU: — LET no lender *for a month, or for two or three months, at a certain interest*, receive *such* interest beyond the year; nor any interest, which is unapproved; nor interest upon interest *by previous agreement*, nor periodical interest *exceeding in time the amount of the principal*; nor interest exacted from a debtor *as the price of the risk, when there is no publick danger or distress*; nor immoderate profits from a pledge to be used by way of interest.

\* The text, numbered XXXII, is again cited in this place, and the converse of this number is again cited at CCXXIX



CULLŪCABHATTA explains "unapproved," unseen; or he so reads the text (*adrīṣṭam* instead of *adrīṣṭam*).

## XLII.

MENU:—STIPULATED interest beyond the legal rate, and different from the *following* rule, is invalid; and the wise call it an usurious way of lending: the lender is entitled at *most* to five in the hundred.\*

## XLIII.

MENU:—INTEREST on money, received at once, *not year by year, month by month, or day by day, as it ought*, must never be more than enough to double the debt, *that is, more than the amount of the principal paid at the same time.* †

## XLIV.

HARITA:—SOME allow a *pana* each month for one *purāna*, or a *sixteenth* of the principal.

2. GRAIN, *borrowed before the harvest*, may be doubled or at most trebled *according to its price* at the time of harvest, *being then payable by agreement*, and so may wool and cotton: but *grass* and the fibres of *grass*, clarified butter, salt, and raw sugar, may be increased eight-fold, in one year.

## XLV.

NAREDA:—OF interest on loans, this is *the universal and highest rule*; but the rate, customary in the country, where the debt was contracted, may be different:

2. IT may be double, or treble, or, in another country,

\* Before this text, the compiler again cites the text numbered XXXIII. A different construction is put upon the text by commentators. See the exposition numbered V.

† The remainder of this verse is cited in a subsequent Section (v LXI). The first part of the following text has been already cited (XXXIV)

## XXXVIII.\*

YĀJNYAWALKYA: — INTEREST on interest is *chacraṁṛiddhi*; monthly interest is named *cālicā*; that, which is stipulated by the party himself, is *cāritā*; but *cāyicā* accrues from the body of a pledged quadruped.

2. A DEBT, secured merely by a written contract, shall be discharged, from a moral and religious obligation, only by three persons, the debtor, his son, and his son's son; but a pledge shall be enjoyed until actual payment of the debt by any heir in any degree..

## XXXIX.

VYĀSA: — THAT interest is called *cāyicā*, which arises from (*cāyā*) the body of a pledged female quadruped to be milked, or a male animal to work or carry burdens.

## XL.

GOṬAMA: — SOME hold, that no lender should receive interest beyond the year.

A RULE, says MISRA, abridged from the following text of MENU.

## XLI.

MENU: — LET no lender for a month, or for two or three months, at a certain interest, receive such interest beyond the year; nor any interest, which is unapproved; nor interest upon interest by previous agreement; nor periodical interest exceeding in time the amount of the principal; nor interest exacted from a debtor as the price of the risk, when there is no publick danger or distress; nor immoderate profits from a pledge to be used by way of interest.

\* The text, numbered VXXII, is quoted in the 131st and 132nd verses of the 1st number is again cited at CCXXIX

CULLŪCABHATTA explains "unapproved," unseen; or he so reads the text (*adr̥iṣṭam* instead of *adīṣṭam*).

## XLII.

MENU:—STIPULATED interest beyond the legal rate, and different from the *following* rule, is invalid; and the wife call it an usurious way of lending: the lender is entitled at most to five in the hundred.\*

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MENU:—INTEREST on money, received at once, *not year by year, month by month, or day by day, as it ought*, must never be more than enough to double the debt, *that is, more than the amount of the principal paid at the same time.*†

## XLIV.

HARITA:—SOME allow a *pana* each month for one *purāna*, or a *sixteenth* of the principal.

2. GRAIN, *borrowed before the harvest*, may be doubled or at most trebled according to its price at the time of harvest, *being then payable by agreement*; and so may wool and cotton: but galls and the fibres of galls, clarified butter, salt, and raw sugar, may be increased eight-fold, in one year.

## XLV.

NAPEDA:—OF interest on loans, this is *the universal and highest rule*; but the rate, customary in the country, where the debt was contracted, may be different:

2. IT may be double, or treble, or, in another country,

\* To fix this text, the compiler again refers to the text numbered XLXIII. A different construction is put upon the text by commentators. See the exposition numbered V.

† The remainder of this verse is given in a separate section (v. LXI). The full part of the following text has been already cited (XLI. IV)

liquidated after that period, such interest only, as is settled by five persons *acting as arbitrators*, is received from that date. In other countries, half interest is only received for a few days as determined by five persons *acting as arbitrators*, and beyond that time, such interest as is settled by them.

THIS *seeming contradiction* may be reconciled from the text of NAREDA, "but the rate customary in the country, where the debt was contracted, may be different" (XLV 1). However, another objection is started: if stipulated interest can only be received at legal rates, it contradicts the text of CATYAYANA (XXXVII 1), for he describes stipulated interest as exceeding the allowed rate. It is answered, the prohibition against receiving any interest, which is unapproved, does not denote it *legally* irrecoverable, but immoral. If, therefore, a man require stipulated interest above the rate allowed by the law, he can recover it, but is guilty of a moral offence. This is evident from the text of VRĪHASPATI, "and the exaction of the principal and interest after a part of it has been liquidated is reprehensible" (XXXV 7). YAJÑAWALKYA also declares "all borrowers may pay whatever interest has been stipulated by them" (XXXII). On this exposition, the interest payable by those who travel through vast forests, as specified by YAJÑAWALKYA (XXXII) is legal, for the text is cited with this observation, "the sage declares an alternative in respect of interest varying according to the *class of the receiver*, that is, the receiver of the loan. But, in fact, it is proper to consider this as descriptive of stipulated interest, for it has the same import with the text of MENU (XXXIII). However, such stipulated interest is legal, because it is authorized by an express law, but the text of VRĪHASPATI (XXXV 7) intends other borrowers than such as traverse the ocean and the like.

It should not be argued, that the text of MENU has a different purport, coinciding with part of the text of YAJÑAWALKYA, "or whatever interest has been stipulated by them" (XXXII). That would be inconsistent with the interpretation of this text, "all borrowers, *Brāhmanas* as well as others, should pay, to lenders of all classes whatever interest has been stipulated and promised by them". But, if it be expounded, "all borrowers, whether trafficking by sea or not" then it may be made to coincide with the text of MENU

HERE it should be observed, that the author of the *Mitacsharū* supplies the reason for the rate of ten in the hundred, and the like, payable by those who travel through vast forests, and the rest, “ because there is risk of losing even the principal lent ’ It is therefore indicated, that on loans secured by a pledge or the like, where no risk of losing the principal is incurred, the eightieth part only should be taken

THE text of YAJNYAWALKYA on compound interest and the rest (XXXVIII 1) is not approved in the *Mitacshara* According to the opinion delivered in that work the receipt of interest named *calica* and the rest, even beyond the year, is not forbidden

## II. According to CHANDESWARA .

“ INTEREST beyond the year ’ (XLI) signifies interest exceeding the year If a moneylender, apprehending that the sum lent would be repaid by the borrower in very few days, bargain for specifick interest, it shall only be extended to the close of the year, not fixed for a period exceeding that *space of time*

CHANDESWARA

THE meaning suggested by the gloss is this a borrower asks a loan of a moneyed man, but he conjectures from the borrower’s purposes, that it will be early repaid, he therefore says, “ if you will undertake to pay interest for six months, I will lend the money, ’ and the borrower, agreeing to this condition, accepts the loan In such a case as this, a lender may require a stipulated period of six months, ten months, or one year, but not a greater time

In like manner, some person, whose capital is small, practises money-lending because he is unable to provide for his wants by other modes, a man, needing a loan, said to him “ lend me money, ’ the moneylender rejoined, ‘ when wilt thou repay it? The borrower told him, “ my brother is gone to the royal residence, when he returns, two or three months hence, I will repay you ” The moneylender considered, “ he will repay it early, and my gain will be small, why should I trust my property in the

hands of another for so small a gain? If he will promise to pay interest during a long period, then only should the money be lent.' Accordingly he told the borrower 'if thou wilt pay interest during a longer period I will advance the loan.' The borrower acquiescing in this proposal, the lender added, 'if thou shouldst repay the loan within the year, at the end of six or seven months, or at any time before the close of the year, I must receive the amount of interest for a whole year.' So saying he advanced the loan, and the borrower, agreeing to those terms, contracted the debt and interest computed for a whole year was paid, whether he discharged the debt within the year, or at the close of the year. In such a case as this, a lender should not require a stipulation for interest one day beyond the year. But if the borrower cannot discharge the debt even at the expiration of the year, then indeed legal interest may be received beyond the year.

'Nor any interest which is unapproved' let no lender receive compound interest, nor interest for stated times, nor stipulated interest nor corporal interest, in modes, or at rates unauthorized by the law. Consequently he should only receive periodical interest and the rest, in legal modes, that is, at the rate of an eightieth part of the principal and so forth.

Does not *carita* signify interest specially and freely promised by the debtor? How then is it regulated by legal rates? *It is regulated by the texts of MENU (LXXIII) and HARITA (XXXIV and XLIV)*

THE text of MENU is thus expounded "men well acquainted with sea voyages" are mentioned merely as an instance suggesting a trader in general. 'With times and with places, who see, that so much is the profit, on such articles, at such a place. That interest, which such traders settle when borrowing money, has legal force, and should be adjudged.

THE first text of HARITA (XXXIV) is applied by CHANDESWARA to borrowers of a mixed class. "Grain may be doubled at the time of harvest" (XLIV 2); grain is doubled at the time when new grain is gathered, even two or three months after the loan. If it be not then paid, it can only

only be trebled, and bears no further interest. " And so may wool and cotton;" wool, that is the hair of sheep and the like, and cotton also, bear the same interest as grain. " But the fibres of grafs &c." on the fibres of the *virana* and the like, and on grafs and the like, the interest is eight-fold for one year. Such is the gloss on the text of *HAṚĪṬA*; and the meaning is, that this text does not concern the limits of interest.

Is not this unreasonable? Grain must be repaid two-fold at the time of harvest; that is, when new grain is gathered. If grain, therefore, be borrowed in the month of *Asbādha*, *Jyaisbhi* or the like, it must be repaid two-fold in *Bbādra* or *Pausa*. It is, consequently, a great disparity, that the same interest should be received in seven or eight months, which would be due in fifty months *at the prescribed rate of two in the hundred*. Aware of this question, *CHANDĒSWARA* cites the text of *NAṚEDA* (XLV), and thus expounds it: " this rate of interest, an eightieth part of the principal and so forth, is universal, because it is authorized by the law." In some countries, corn is repaid with an advance of a quarter; in others, with an advance of half *the quantity lent*: these rates are also comprehended *in the text* (XLV 2); for twice, and three times as much, and so forth, are mere examples. Consequently, on salt, clarified butter and the rest, interest should be taken at the rate settled by the immemorial custom of the country.

BUT interest at ten or twenty in the hundred, payable by those who travel through vast forests, or traverse the ocean, is not stipulated interest (*cāritā*); for *CHANDĒSWARA* says, payment of it may be enforced whether it have been stipulated or not. In fact so much interest, as is specially promised by the debtor, is stipulated interest; not confined to the rate of an eightieth and so forth. That stipulated interest also is allowed by the law, for *YĀJNYA-WALCYA* declares, " borrowers may pay whatever interest has been stipulated by them" (XXXIII); and *CĀṬYĀYANA* says, " stipulated interest is that which has been specially promised by the debtor" (XXXVII). This interest is legal, if it were promised in a time of extreme distress; but, promised by compulsion without such distress, it is not legal, for *CĀṬYĀYANA* adds, " and in no other case whatever must stipulated interest be paid." Even though stipulated in a time of extreme distress, *on a loan renewed*, it

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is not legal, if payment could have been obtained, for VRĪHASPATI declares, " the exaction of the principal and interest after a part of it has been liquidated, is usury and reprehensible ' (XXXIV 7)

*Cayica* s of two sorts, *one* arising from the body of a *pledged* female animal to be milked, or a male animal to work or carry burdens, as described by VYĀSA (XXIX), *the other* explained by NĀREDA, interest repeatedly paid without diminishing the principal (XXXVI) The use and profit of a cow or the like to be milked, or of a boat or the like, where no such agreement has been *expressly* made, as described by CAṬYAANA (XXXVII 3) is the *cayica* of VĀSA, and it should be taken at the rate of an eightieth part *by the month* under the restriction of the text, " nor any interest, which is unapproved' (XLI)

CHANDĒSWARA says, a cow or the like to be milked, or an ox or the like to work or carry burdens, are instances mentioned generally; for the use of boats or the like, not expressly pledged, must otherwise be excluded from that definition of *cayica* When there is such an express agreement as described by CAṬYAANA, the use of the pledge is *adhībhōga*, the same with *bhogalabha* propounded by VRĪHASPATI In this case, no reference is made to the rate of an eightieth part, for no text specially directs it the whole use and profit of the pledge *shall be the interest*, for such is the import of the text These two kinds of interest are consequently distinct, but should be admitted as has been stated

THE *cayica* of NĀREDA is thus explained, " interest to be repeatedly paid without diminishing the body (*caya*) of the principal sum at the rate of a *pana*, or half or other fraction of a *pana*, as agreed by both parties, is named *cayica* according to NĀREDA "

CHANDĒSWARA

FOR instance, a borrower, coming to a moneyed man, asks a loan, in reply, he asks, " when wilt thou repay it ? " the borrower rejoins, " I will repay it at the end of a month " a loan is accordingly concluded to mutual satisfaction Afterward, at the close of the month the creditor demands payment,



payment, but the debtor, unable to discharge the debt, answers evasively, " I will pay you at the end of a fortnight ." the creditor repeatedly urges payment, and the debtor, in order to satisfy him, promises some additional interest, such as a *pana* (or the like ) That additional interest, which he thus promises from time to time being repeatedly settled between the parties day after day, is the *cayica* of NĀREDA, it is not the stipulated interest named *carita*, for that commences from the date of the loan On this account it is separately mentioned by NĀREDA.

" WITHOUT diminishing the principal," in the case of interest payable at stated times (*calica*) and the like, if more than an eightieth part or the like have been paid for interest, whatever appears, on computing the account at the time of discharging the debt, to have been overpaid, by so much is the principal, which was receivable by the creditor, diminished But, in this case, what he receives from time to time, above the rate of an eightieth part, does not reduce the principal sum It is not proper to say, that the interest should only be received at legal rates, because this (*cayica*) is in its own nature a breach of the law Were it so, *β* *il* the text, prohibiting any interest, which is unapproved (XLI), concerns only the *cayica* of VYĀSA, not this (*cayica*) this form of interest is only mentioned by CHANDĒSWARA incidentally. The word (*saśwat*) " repeatedly" signifies again and again. for it is so explained by AMERĀ (Chapter XVII, on indeclinable words).

THAT interest, which is received month after month, at the rate of an eightieth part of the principal, is considered as *calica* Here month is a mere instance, that interest, therefore, which is received by the year, is also considered as *caluṭ* and so is that, which is payable at the end of six months, or the like. Accordingly MENU, in the text cited (XLI), mentions interest for time generally.

" INTEREST upon interest " when a debtor, unable to pay the whole amount of interest, promises to pay it with interest, the interest, which is so promised, is wheel-interest.

CHANDĒSWARA.

MORE will be said on this subject, in the section on recovery of debts: but even interest upon interest a man should only take at the legal rate of an eightieth part and so forth.

WHEN the borrower, at the time of receiving the loan, makes an agreement in this form, " I will pay twenty shells a day," and the loan is made on those terms; in that case, such interest is hair-interest, as described by VRĪHASPATI (XXXV 4). Interest by enjoyment (*bhōgalābha*) has been already explained in the gloss on *cāyicā*.

*Cāyicā*, hair-interest, and interest by enjoyment, shall be paid *entire*, so long as the principal remain unpaid. If the payment of interest have been discontinued a few days after *the loan*, and the debtor be only able to pay the debt ten or fifteen years afterwards, twice the amount of the principal only shall *in general* be received by the creditor, in lieu of other interest (XLIII.): but it is not so in the present case. On the contrary, hair-interest shall be received on a calculation of the daily amount *forborne*. *Cāyicā*, or interest accruing from a pledged body, shall be received on a computation of an eightieth part of the principal monthly, until the principal be liquidated: if the thing to be used be destroyed by the act of GOD, another chattel must be delivered in its stead; or, if that cannot be, interest must be made good otherwise. Interest by enjoyment continues so long as the thing *pledged* remains with him, who has the use and profit of it: if the pledge be destroyed by the act of GOD, the debtor shall be compelled to deliver another pledge under the authority of a text, which will be quoted in the chapter on pledges. The creditor should receive a fresh pledge; or, if that cannot be, the price of the usufruct *forborne* should be paid, when the principal is liquidated. These rules are grounded on a text of VRĪHASPATI (XXXV 6) and on one of YĀJÑYAWALKYA (XXXVIII 2).

WHAT sort of interest is suggested by the texts, " let no lender receive interest beyond the year" (XL and XLI)? It is said, " such interest as a species of stipulated interest (*cārīṣā*). " Here it should be noticed, that the legal amount of interest, whether received at the time  
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when the debt is discharged or earlier, or both (*partly at one time, and partly at another*) only equals the principal sum. If stipulated interest, *caṣica*, hair-interest, or interest by enjoyment, when added to the principal, more than double it, they are not legal *in a moral view*. By receiving such interest, *Brahmanas* and others, and even *Vaṣṣas* commit a sin, but if a creditor insists on obtaining it, the king shall enforce payment. VṚHASPATI declares as much (XXXV 7). The use and profit of a pledge or the use of a chattel in that form of interest which is named *caṣica* after twice the amount of the principal has been obtained from the usufruct, interest upon interest, and the exaction of principal and interest, that is, of the principal with the whole interest, after a small part or the whole of the interest has been received either as stipulated or monthly interest, is usury reprehensible in a man who subsists by moneylending. The meaning of the text is, that such usury produces the consequence of sin, not that the king shall not enforce payment of it.

“STIPULATED interest beyond the legal rate &c” (XLII), *this text of MENU is otherwise expounded by CHANDĒSWARA* “interest exceeding the rate stipulated by the debtor, and different from the rates prescribed by the law, is invalid for sages have declared the legal way of moneylending.” The legal way of moneylending is founded on this interest allowed by the law, or stipulated by the debtor, is valid, not any other interest. But if the lender, through covetousness, require greater interest, and the borrower, apprehensive of not finding any other lender, be willing to pay *higher interest*, in that case the rule is this, “the lender is entitled *at most* to five in the hundred” (XLII). “From a *Brahmana*,” should be supplied, for the rule would be superfluous, if it were referred to a *Sūdra*. The author of the *Matsyara* seems to have entertained the same opinion, for he has not particularly remarked on this text. On this interpretation also, the payment of hair interest and *caṣica*, so long as the principal remain unpaid, is conformable to the text of NĀREDA (XLV). CHANDĒSWARA’s opinion may be thus briefly stated

### III According to VĀCHESPATI MISRA

On his explanation, *caṣica* and the rest also vary from the legal rate of an eightieth

eightieth part *of the principal* for he cites the texts of VRĪHASPATI in reply to the question, what other kinds of interest are there? And how many sorts of interest? If rate *est* at the eightieth part of the principal, as already mentioned by MISRA, were distributed by VRĪHASPATI into monthly and annual interest and so forth, the citation introduced by the question, "what other kinds of interest are there?" would be irrelevant.

WHEN this question is put, "what other kinds of interest are there?" The answer is, hair interest and interest by enjoyment. "How many sorts?" The answer is, legal interest, as *cālicā* and the rest; and interest not prescribed by the law, as *caritā* and the rest. But the exposition would be imperfect, since the receipt even of legal interest, as *calca* and the rest, beyond the year, is forbidden, and the omission of highest *limited* interest would be derogatory to the *sage*.

SUBDIVIDING into four sorts interest at the rate of an eightieth and so forth, as in the exposition of CHANDĒŚVARA, and adding them to other kinds of interest namely hair-interest and interest by enjoyment, *there result the kinds of interest* specified by VRĪHASPATI. Thus hair interest and interest by enjoyment are stated in answer to the question what other kinds of interest are there? And *caritā*, and other subdivisions of the general rate, are stated in answer to the question, how many sorts there are. This again is erroneous, for, had such been the meaning, the question, how many sorts? should have been first put. To explain it would be vain.

ON this interpretation the *cāyicā* of VĀŚĪ, arising from the profit of a slave's labour or the like, falls under the description of interest by enjoyment; but the *cāyicā* of NĀRADA must be considered as one of the subdivisions of the general rate. For MISRA says, the *cāyicā* of VĀŚĪ falls under the description of interest by enjoyment; but the *cāyicā* of NĀRADA is distinct from these and the *cāyicā* of VĀŚĪ is not mentioned in the following exposition, "*cāyicā* is interest by the year *calca*, by the month, *calaca* *śūdrā*, interest upon interest; *cāyicā*, interest specially promised in a time of extreme distress *śūdrā* interest payable daily, *śūdrā* the use and profit of a slave's labour and the like."

. THE use of distinguishing the *cáyicá* of VYĀSA from interest by enjoyment will be hereafter explained. But the *cáyicá* of NĀREDA is interest payable by the year, considering the word *śaswat*, repeatedly, as signifying annually. This is paid without diminishing the principal; even though received for a thousand years, it does not reduce the principal. If the interest happen to be forborne after *the first* few days, the whole arrears of interest must be paid when the debt is discharged; for, according to MISRA's opinion, this kind of interest is intended by the word *cáyicá* in the text of VRĪHASPATI (XXXV 6): and this has been stated by MISRA on the authority of HELĀYUDHA.

BUT if the expression of MISRA, "to be paid by the day," be authentick; the meaning must be, that the sum calculated on daily interest shall be paid yearly. Else it is inconsistent with his exposition, "*cáyicá* is interest by the year." The special rule, adopted by him, that *cáyicá* and the rest must be received at the rate of an eightieth part, is not suggested by the law: but half-interest, which is receivable daily, is founded on a text of VRĪHASPATI (XXXV 4).

"*Ādhībhōga*, or a loan on the use of a pledge" (XXXVII 3); where an agreement is made, that the whole use of the thing shall be the only interest, it constitutes *a loan on the use of a pledge*. MISRA.

It is consequently intimated, that the word "pledge," in the first part of the text, is indeterminate; for by such an exposition *cáyicá* is of two sorts, one of which corresponds to *ādhībhōga*. It follows, that the various sorts of interest are seven. Of these, the *cáyicá* of VYĀSA, *cálicá*, stipulated interest, and interest upon interest, should not be received beyond the year. For the sake of this distinction, VYĀSA has stated *cáyicá* separately from *ādhībhōga*, to which it is otherwise similar. *Cáyicá* is the use and profit of the bodies of quadrupeds as oxen, horses and the like. Or the repetition of the word pledge in the text of CATYAĀYANA has a determinate use; consequently it should be understood, as in the gloss of CHANDĒSWARA, that *Ādhībhōga* takes place when there is an agreement in regard to the pledge; otherwise the usufruct is *cáyicá*.

terest by enjoyment (XXXV 5) furnishes an instance only of such interest ; for it coincides with the text of CĀTYĀYANA (XXXVII 3). It is thus expounded by MISRA : “ rent” signifies hire, use, or occupation of a pledged house. “ Produce” (*ṣadar*) signifies grain or other fruit of a pledged field ; agreeably to the sense of the verb *ṣad*, cut down or reap.

HERE boats and the like are also suggested by the word “ house,” taken as a general instance : and “ rent,” or use, also suggests transport of merchandise and the like.

IN a gloss on the text of MENU (XLIII), MISRA thus expounds it : “ if gems, money, or the like be received at once, double the amount of the principal only should be taken ; but, if they be not received at once, more may be taken.” Consequently here, as before, if interest have any how remained unpaid after the first few days, the principal is only doubled, however long the period of forbearance may be ; and no more *should be received*.

THE text, allowing a *pana* each month for a *purāna* (XXXIV), and that, which confirms interest settled by men well acquainted with sea voyages (XXXIII), concern stipulated interest only. But these rules subsist where the price is great at the time when the debt is contracted, or where the value of a thing, bought with money borrowed for the purposes of trade, and sold in another country, is improved. The text of HĀRĪTA (XLIV 2) declares legal interest on particular articles. It is proper to consider the text of YĀJNYAWALKYA (XXXII) as solely relating to such interest. This and other inferences may be drawn from reasoning.

IN this exposition BHAVADEVA concurs ; but HELA'YUDHA reads the text of NĀREDA (XXXVI 2), *panarāhyā* instead of *panārdhādyā* ; and explains the text, “ interest to be borne (*vābanhyā*), or received by the creditor, repeatedly, even for a thousand years, if the (*pana*) principal sum remain due, without any diminution of (*cāyā*) the principal, is called *cāyicā*.” On this general consideration it is said by MISRA, that *cāyicā* must be paid, so long as the principal remain unliquidated. But CHANDE'SWARA rejects this reading, because it has been unnoticed by most authors.

“ LET no lender receive interest beyond the year” (XL and XLI); if a creditor is desirous of receiving interest, in such a manner, that interest may not cease on *its equalling* the debt, he should receive his interest before the close of the year, not after the year has expired. The meaning therefore, on this interpretation, is, that he should receive the interest then only, when the debt is discharged, or the highest limited interest due for the time *the loan has remained unpaid*. But if the creditor, through want of confidence in his debtor, or from his own inability to provide for his wants *otherwise*, wishes to receive interest within the year, in that case he may receive it before the close of the year; that is, he may receive the interest for twelve months, month by month. But after a year, the debt is only doubled by remaining undischarged during fifty months; before the expiration of that period, interest is payable on the terms of the loan. Consequently *cáyicá*, if it can be recovered, may be taken beyond the year, when there is a promise in this form, “ I will pay it *regularly* until the debt be discharged;” and so may *cálicá*, if there be a promise of paying it month by month. But if the creditor cannot obtain regular payment, the principal is doubled *in due time*.

*Cáritá* is described by CA'TYA'YANA (XXXVII 1) and noticed by MENU (XXXIII). By the rule, “ nor any interest which is unapproved” (XLI), *it is directed* to take even *cáyicá* and the rest only at the rate of an eightieth part and so forth. But, if there be an agreement in this form, “ I will pay it daily,” it is hair-interest. Other interest must be regulated in the mode abovementioned.

#### IV. ACCORDING TO SU' LAPA'NI in the *Dípacalcá* :

ON the text of YĀJNYAWALKYA (XXXVIII 1) it is remarked in his work, “ this verse is not found in some copies.” Interest is of six sorts, under the text of VRĪHASPATI (XXXV 2). There *cáyicá* is interest which arises from the labour or use of an animal to carry burdens, or of a female quadruped to be milked; *cálicá* is interest, which is payable by the month; interest upon interest is *clacavāridbi*; interest *especially and freely* promised by the debtor himself is *cáritā*; that, which is received daily, is *ñic'láuriddbi*; and the profit arising from the use of a pledge is *bhōga*.

Among

Among these, *sic'hāurīddhi*, *cāyica*, and interest by enjoyment may be received until the principal be discharged (XXXV 6).

THIS notion is intimated, according to YĀJNYAWALCYA, interest by enjoyment is comprehended under corporal interest (*cāyica*) and the *cāyicā* of NĀREDA, as expounded by CHANDĒSWARA, falls under the description of stipulated interest (*carita*) as expounded by MISRA, it falls under the description of interest payable at a time certain (*cāyica*), for the word "month" is a mere instance of a general sense. *Sic'Lawrīddhi* is only a distinct form of stipulated interest, but so long as the principal remain unliquidated, this interest must be paid to fulfil the terms of the agreement. But, if there be no promise of paying it daily so long as the principal remain undischarged, it is not *har* interest. If an agreement, that interest, at the rate of four *fanas* or the like, shall be paid every fifth day, so long as the principal remain undischarged, that also should, it seems, be paid until the principal be liquidated, but such a contract ought not to be made, because it is not authorized by the law.

THE text of MENU (XLI) must be explained as in the gloss of HELĀYUDHA, but other texts must be understood in the mode already stated. In the text of YĀJNYAWALCYA (XXXII), greater interest is allowed on account of the risk of losing the principal it is therefore legal in this author's opinion. With this exception the text of VRĪHASPATI (XXXV 7) is applicable to all cases. The sage declares an alternative in regard to the prescribed rates of two and three in the hundred and the like, "or whatever interest has been stipulated by them" (XXXII). This consequently intends stipulated interest and the like and the text, beginning with the words "interest upon interest" (XXXVIII 1), only recapitulates those sorts of interest.

#### V ACCORDING TO CULLUCABHATTA.

"LET no lender receive interest beyond the year" (XLI), if a creditor, having contracted for interest payable at stated times (*cāyica*) or the like, but finding it troublesome to receive interest monthly, tell the debtor, "thou shalt pay the interest of several months at once," still he should receive it  
S  
within



within the year. For example, interest for six months, for ten months, or for one year, may be paid at once, not interest for thirteen, fourteen, or fifteen months. The meaning is this, if he do not receive interest before the close of the year, in that case, since its periodical payments are interrupted, and it can only be received when the debt is discharged, interest can on no account be more than sufficient to double the debt as is declared by MENU (XLIII). It is implied, that interest receivable day by day, month by month, or the like, may be taken to a greater amount than is sufficient to double the debt provided the principal remain unpaid. Such is the gloss of CULLŪCABHĪTTA.

HERE interest receivable day by day is the *dayat* of NĀPĒDA, for the word *dayat*, "repeatedly," in that text (XXVI), bears the sense of "daily." The same interest is described by VRĪHASPATI, under the name of hair interest (XLV 4). Not considering the *dayat* of VYĀSA and profit by enjoyment of a pledge (*b' g'ābhā*) as interest, it is stated that the various sorts of interest are four. But, if these be not acknowledged to be sorts of interest, there are five, or six kinds.

HERE the *cāyicā* of NĀREDA must also be comprehended under the term *cāyicā*. Hence the receipt of that also is shown immoral. How is it immoral, if the debt be discharged within the fourth or fifth month, for, in that case, more interest than is sufficient to double the principal, is not received? *This objection is not well founded*, for those kinds of interest are reprehensible from their intrinsic evil. On this opinion also, a creditor, who advanced a loan, should only receive twice the amount of the principal, after the time when the principal is duly doubled, and not at any time before that period. But, if the debt be discharged before the time when it would regularly be doubled, in that case the principal, with *legal* interest only, should be then received. Thus *Brāhminas* and the rest violate no duty. Within that period, whatever interest is received at any stated times, is *cāyicā*, for the word "month" is *merely* an instance *stated generally* in the texts of NĀREDA and others (XXXVI 2). Accordingly MENU mentions periodical interest generally (XLI).

THE text *subsequently cited* (XLII) is applicable to the case of interest due without a special agreement. That will be explained under its proper head. The text, "whatever interest shall be settled by men well acquainted with sea voyages &c" (XXXIII), is expounded as above stated.

How can it be said, that stipulated interest (*carita*) is unauthorized by the law, since *carita* is described in the code of CA'TYA'YANA, "interest which has been specially and freely promised by the debtor in a time of extreme distress" (XXXVII)? Nor should it be argued, that it is unauthorized by the law, not being suggested in the *Veda*. The text of CA'TYA'YANA may also be considered as *a portion of the Veda* else the highest *limited* interest, such as interest doubling the debt and the like, would also be unauthorized by the law. To this it is answered, the law expresses generally, that a *Vaisya* and others may subsist by moneylending in a *silver* to the question, how much profit ought to be taken *by a moneylender*, the texts of MENU and the rest are adduced, or the scriptural law to be established through them, a lender may receive, on a loan, the eightieth part of the principal and so forth, in the order of classes, as prescribed, or he may take, as the highest interest, if the debt have been long out-standing.

HERE it should be observed, that large gains are the grounds, on which greater interest is paid by those, who traverse the ocean, as intimated by the text of MENU, " whatever interest shall be settled by men well acquainted with times and with places " The grounds are the same in other circumstances of the same case, intended by the text of YĀJNYA-WALCĪA (XXXII), not the risk of losing the principal Thus the rate of interest is the same, even though the debt be secured by a pledge

Does not the text of MENU (XXXIII) consequently become unmeaning, since CATYĀYANA authorizes the payment of stipulated interest by debtors of all descriptions (XXXVII 2)? No, for CATYĀYANA declares, that interest, which has been promised, through compulsion, by others than seafaring traders and the rest, shall not be paid, " and in no other case whatever must stipulated interest be paid " (XXXVII 2) But a special rule is delivered (XXXIII), to legalize interest promised, through compulsion, by seafaring traders and the rest This text, however, is considered by CHAIDĒSWAĪ, as intending traders in general and both texts are referred by him to the head of stipulated interest (*carita*) But interest promised by others than traders, in a time of distress is called *carita* and must be paid by the debtor, but, promised through compulsion, without any necessity arising from a season of distress it need not be paid (XXXVII 2) This is a general instance sometimes, from the circumstances of the times, even less than legal interest accepted by the lender is consistent with usage, and falls under the description of stipulated interest By accepting it the lender commits no sin, but by parity of reasoning, a sin is committed by the debtor \*

If stipulated interest above the rate of an eightieth part may be paid by the free consent of the debtor, what is the purport of the text of MENU (XLI)? Some explain it ' let no lender receive interest on money, which has not been lent more than a year Consequently this belongs to the case of interest without a special agreement so VISHNU ordains 'after the lapse of one year, debtors must pay interest as allowed even though not agreed

\* Since the lender sins by exacting more than legal interest the commentator thinks a borrower sins by taking advantage of the times to pay less than legal interest

on at the time of the loan †." For example, the debtor, having occasion to incur expense for the nuptials of his son or the like, thus addressed the lender, "advance me this loan without interest, after completing the rites intended, I will repay it, making up the sum by the sale of effects, or by alms any where obtained," the borrower thus contracted the debt if it be demanded, but not paid, while he remains in the country, it bears no interest for one year, but after that period it bears interest. Such is the purport of the text. Then what interest should debtors pay? The sage propounds it, "interest as allowed," is declared by the law concerning creditors, at the rate of an eightieth part and so forth, in the order of the *several* classes, *Brahmanas* and the rest. This interpretation of the text of VISHNU is approved by CHANDĒSWARA. The distinction respecting such, as *fraudulently* go to another country, will be mentioned (Section III)

By the negative in the expression, "let no lender receive &c." is it signified that he cannot receive it, or, joined to the imperative, does it signify, that duty is not fulfilled, and *consequently* that the receipt is immoral? Since no other law intimates the receipt of *such interest* within the year, there is no contradiction and, as there is no law to remove the doubt, how soon a loan, which has been advanced without interest, shall bear interest it is signified that interest shall not be received within the year. Thus, if a creditor, who had delivered a loan without interest, ask interest from the date of the loan, when payment is tendered after the lapse of the year, the payment of interest for the period exceeding one year shall be enforced by the king and, in this case, the year consists of three hundred and sixty days, counted by *śivana* time, is deduced from the texts already quoted from the *Mānavaśāstra* (Section I, gloss on text XXV)

"He may take interest, which is unapproved" (XLI), which is not prescribed to lenders by the law, such as interest upon interest, and the rest, but not any other interest except interest upon interest and the rest. This is an explanatory precept. However, the receipt of interest upon interest and the rest is immoral, as declared by the text of VRĪHASPATI (XXXV 7).

† Cited in its proper place in Section III (v LII)

Is it not impossible there should be interest different both from interest upon interest and the rest, and from interest at the rate of an eightieth part and so forth : how can an explanatory precept have been delivered forbidding other sorts ? If a man have contracted a debt, at the time of harvest, for the support of his family, and have hoarded a large quantity of grain ; and, the price happening to be greatly enhanced, should the creditor at the time of repayment say, “ the price of grain, which was purchased by thee with my money, was doubled in five months, pay me therefore double the principal besides interest thereon ; ” this explanatory precept is intended to prevent such a transaction. It is accordingly usual, in some districts, for lenders, who desire greater profit, to require from the borrower a stipulation for the current price in the month of *ʿAṣṣādḥa*.

If such be the meaning, what is the scope of the text of *MĒNU* above cited (XLII) ? It is a rule for interest on a debt contracted without an agreement for interest ; for, if a debt so contracted remain long unpaid, it bears interest. This will be particularly discussed in another place (Section III). The text is an answer to the question, whether interest shall in this case be taken at the rates prescribed by the law, or in the form of stipulated interest (*cáritá*) and the like : interest beyond the rates prescribed by the law, which suggests the mode of subsistence by moneylending, is invalid. Though asked by the lender, it shall not be obtained. A reason is given ; because the wise have declared those rates, as fixed by the law, the proper way of lending ; hence a creditor of the servile class is entitled at most to five in the hundred.

If the rate fixed by the law be the only proper way of lending, is not other interest, even though promised by the debtor in a time of extreme distress, invalid ? Therefore does the sage add, “ different.” Here again fixed rates must be brought forward ; “ different from the rates fixed by mutual consent of lender and borrower.” Interest different from that, and exceeding the legal rates, is invalid. Such is the sense of the text (XLII). After how many days does a debt, which remains unpaid, bear interest ? It is answered ; “ let no lender receive interest arising from a debt, which has not exceeded one year.” Or the negative may be under-

officer against the exaction of exorbitant duties, is the exertion, for which he receives a quarter of the profits, so, in the first case, the act of furnishing a loan as a capital for trade, and the stipulation then made, constitute the exertion on the part of the lender. Or, in both cases, the money *paid* is similar to gratuitous presents of bread, fruit, mangoes, fish and the like. *It is not cayica arising from the personal labour of the borrower, nor interest of its own nature arising from increase of stock, for that is not named in the law as a species of interest, nor is it described under any other kind of interest.*

If the merchant trade in *tila* gold or the like, and the lender receive from the merchant half the *tila*, gold, or the like, gained in commerce, in that case, since the merchant is independent, the lender's ownership is the only motive for the delivery of the thing. The delivery and receipt are consequently civil acts, and the receipt is no acceptance of things bestowed for religious purposes. There is no consequent sin in receiving those things. Thus some expound the law.

IN the case supposed, if the merchant, who borrows the money, trade in salt, lac, or the like, with or without the knowledge of a *Brahmana* who lent the money, the sin falls on that *Brahmana* according to the circumstances of his knowledge or ignorance of the particular trade carried on. This is a demonstrated rule.

ON the doubt, whether it be money advanced for commerce, or money lent, it is said, one half is a loan vesting temporary property in the user, and the other half is money advanced for commerce. Hence there is, in this case, trade in partnership, and a combination of debt and commerce to receive interest on the whole sum, without a previous agreement, would be therefore contrary to law. But, if the lender delivered the money with this stipulation, "the whole sum shall be a loan in thy hands, and it shall produce to me half the commercial profit," there, since the two acts (of advancing a sum for trade and delivering it as a loan) are incompatible, the contract of loan shall prevail, for the property of the former owner is divested by that act. He shall not therefore receive half the commercial profit, but interest on the whole sum of the profits of trade so much only, as the merchant may voluntarily give, can be received by the lender. If the capital happen to be lost, whether the exonerating clause ("if a loss happen, it shall not fall on me,") be expressed in the agreement or not, the loss does not fall on the creditor, but on the debtor alone. But, if an agreement were made for the payment of half the commercial profit by the debtor, it must be paid to fulfil the agreement, as abovementioned. This has been sufficiently explained.

THE *cāyicā* of NA'ĀREDA should be explained, as in the gloss of CHANDĒSWARA, from the sense of the word *śaśwat*, repeatedly, or again and again. Or the method, approved by HELA'ĪUDHA, the *Mitacshard*, MISRA and others, may be followed thus *cāyicā* is interest payable daily; and the word *śaśwat* signifies long, as in the example "*śaśwatib śemāb*, many years," and in other instances. According to VRĪHASPATI, it is included in the description of hair interest, and must be paid so long as the principal remain undischarged. In the text, it is particularly mentioned, "at the rate of a *ṣana* &c." (XXXVI 2) to remove the doubt whether interest should be received daily at the proportional rate of an eightieth part

by the *m rth* more or less than that rate is therefore taken as hair-interest; and such is the current practice. This being the case, the *caricá* of NA' REDA, as explained by CHANDESWARA, falls under the description of (*carita*) stipulated interest.

WERE it so, would it not be unpaid, for the text of CA'TYA'YANA expresses, "in no other case whatever must stipulated interest be paid" (XXXVII 3)? Payment being requisite when the period, for which the *sun* was lent, had elapsed, the debtor's inability to make immediate payment occurred as a circumstance of distress. Therefore interest then settled, as the *corfd* rate of forbearance, must be paid, though it be (*carita*) stipulated interest. But greater interest, promised before the period had elapsed, in consequence of menaces, need not be paid.

BUT *calica* is regulated by the rate of an eightieth part and so forth with or without an agreement, it is interest receivable month by month, on the concurrent opinions of many authors. According to this interpretation, if a creditor be desirous of receiving his interest on a loan, of which the interest has not ceased because it has not yet equalled the principal, he must take (*calica*) periodical interest. In that case there is no limitation of a subsequent period, beyond which interest may not be received, a distinction assumed by HELA'YUDHA. Here it should be noticed, that the word "month" is merely a general instance accordingly MENU states periodical interest generally. Hence that interest, which is receivable every half year, is also *calica*. Consequently whatever interest is received from time to time, at short periods before the debt is discharged, is *calicá*. But this interest may be included under (*carita*) stipulated interest. However, *ñic haviriddhi*, which ought to be received day by day, but in some instances is paid by debtors to creditors for many days at once, to five trouble, is not (*calica*) periodical interest. The *carita* of CA'TYA'YANA has been sufficiently explained.

IT should be remarked, that interest at the rate of twenty in the hundred, payable by seafaring traders and the like, and at the rate of ten in the hundred by those who travel through vast forests and the like, is (*carita*) stipulated



lated interest. It should not be asked, how can interest at the rate of twenty in the hundred and so forth be deemed *cārṇā* as this is described by NĀREDA (XXXVI 3), since CHANDĒSWARA, in his gloss on the texts concerning those rates of interest, mentions, that interest at the rate of twenty in the hundred and so forth must be paid, even though not expressly promised by seafaring traders and the rest when the loan was received? As interest at the rate of two *panas* a month for one silver coin, though not expressly promised, is paid by the immemorial custom of the country (on the ground, that interest, formerly settled by certain debtors expressly promising it to their respective creditors, is considered in practice as stipulated interest, and is therefore now valid by tacit consent, though not specified by an individual borrower, and is adjudged by arbitrators quoting *for their authority* approved usage;) so, in this case, the text (XXXII) is cited as proof of customary interest. Else law must be established on another foundation than scriptural *authority*.

ACCORDINGLY MENU does not specify the rate of twenty in the hundred and so forth; but says, "whatever interest shall be settled by men well acquainted with sea voyages &c." (XXXIII). Consequently this sense is deduced *from the text*; such interest only, as is settled by merchants, shall be paid: if the party himself have not stipulated the rate, that interest only, which has been promised by former borrowers, as instanced by YĀJNYA-WALCYA (XXXII), must be paid. In the text of NĀREDA (XXXVI 3) the word "debtor" must be considered as denoting any person who contracts debts and follows the practice derived from *the example of* eminent persons.

WHAT is the rate for those who do not traverse the ocean, but cross the SINDHU and other great rivers? It is answered, they are travellers by dangerous routes (explaining "*carṇāragāb*" in a general sense, instead of restricting it to travelling through vast forests); they must therefore pay ten in the hundred. The meaning is this; such as travel by difficult roads, where life is endangered, necessarily obtain greater profit, and therefore pay higher interest. but those, who voyage by sea (a still more difficult route, in the highest degree tremendous, where life is exposed to the utmost danger,) transporting

transporting large cargoes with great trouble, certainly obtain still greater profit; twice as much should therefore be paid by them. When no special agreement has been made respecting the rate of interest, what should be received from those traders, who neither travel by dangerous roads nor traverse the ocean, but buy and sell in their own country? Interest at the rate prescribed by the texts which specify an eightieth part *by the month*; for this text (XXXII) cannot be extended to a general sense. But if they promise to give interest, then indeed such interest should be paid (XXXIII). Since CHANDĒSWARA expounds the phrase in this text, "men well acquainted with sea voyages," as a mere instance suggesting a trader in general, that general sense is the ground of this inference, coinciding with the *latter part of the text* of YA'JNYAWALKYA, "or whatever interest has been stipulated by them" (XXXII).

dangerous routes; in that case, therefore, payment of ten in the hundred is legally required. Seafaring, "*Sāmudra*," here bears its regular sense, as a derivative from the noun (*Samudra*) sea; and a similar exposition is established from its association in the text (XXXII), "such as traverse the ocean, twenty in the hundred."

If the interest have not been settled, legal interest only should be taken; if it have been settled, a similar exposition is established from the import of the words "well acquainted with sea voyages, and with times and with places," in the text of MENU (XXXIII). Therefore, in this case also, interest at the rate of an eightieth part and so forth ought alone to be paid; but interest promised by the debtor must be paid (XXXVII). However, if it be promised through compulsion, it need not be paid; as shown by the sequel of the same text (XXXVII 2). But, when men travel for the purposes of commerce, such interest, though promised through compulsion, must be paid; else the description stated in the text (XXXIII) would be unmeaning, "men well acquainted with sea voyages."

Is it not *true*, that stipulated interest need only be paid, when promised in a time of distress (XXXVII); yet in this instance, the borrower experiences no distress; on the contrary, it is a time of exertion for gain. How then can it be intended by CA'TYAYANA, that interest, promised in such circumstances, should be paid? *The objection is not well founded*; "a time of extreme distress" is mentioned by way of illustration; else, should a man receive a loan from a moneylender, on a stipulation of more *than regular* interest, to accomplish the construction of a house or the like, which he is anxious to *erect for the sake of reward* in a higher world, he would not pay such greater interest, because it was not stipulated in a time of extreme distress; but he, who promised greater interest for the sake of performing his father's obsequies, or celebrating his daughter's nuptials or the like, must pay it: which would be contrary to reason. The opinion of CHANDESWARA and others is therefore accurate, that CA'TYAYANA only declares undue that interest, which has been promised through compulsion.

WHERE a trader, having promised, or not having promised, greater interest

terest through compulsion, traverses forests or seas, in expectation of great profit, but *such* great profit happen not to be *obtained*, what interest should in that case be paid? It is said, whether great profit have been obtained or not, the journey through forests or the like is *performed*, therefore interest at the rate of ten in the hundred and so forth, or *any* interest which has been promised, must in such a case be paid. All this is deduced from the exposition of the text. But in fact the settled rule should be argued from the immemorial custom of the country.

WHEEL-INTEREST is explained by CHANDÉSVARA, where the debtor, unable to discharge the arrear of interest, promises to pay it with interest, that interest, which is so promised, is (*chakra vṛiddhi*) wheel-interest. It should be understood, that, if the creditor, actually receiving the amount of interest from the debtor, at the very same time lends again that very sum to the debtor, it is not wheel-interest, for the amount of interest becomes, in this case, a principal sum. Accordingly it is said, in the following text of MENU, "He, who cannot pay the debt"

#### XLVIII

MENU.—HE, who cannot pay the debt *at the first time*, and wishes to renew the contract, may renew it in writing, *with the creditor's assent*, if he pay all the interest then due.\*

For, if he pay the sum into his creditor's hands, and having torn the former writing and executed another writing, receive the same *sum*, the phrase, "may renew it in writing," would not be employed. Since the debt is different from the former debt, the writing is then executed for the debt then contracted, without connexion with the former writing. But, if he do not discharge the sum, he renews the contract in writing for that same debt with interest, after cancelling the former writing. If an artful creditor, himself, deliver other money into the debtor's hands, and bid him pay the *former* debt, and the debtor do so, surely in that case it is not wheel-interest, interest upon interest should only be considered as valid, when no such artifice

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\* See CLVII, where the verb is *akṛād*.

is practised. This should be determined by the wife Other points will be stated in the chapter on the recovery of debts

It has been mentioned more than once, that hair-interest is *interest* receivable day by day, in consequence of an agreement in this form, " I will pay it daily Interest by enjoyment is the use and benefit of a pledged house and the like (XXXV 5) " the rent, or use and occupation, of a house, and the produce (*śadaś*) of a field according to the literal sense of the verb *śad*, cut down or reap, is remarked by MISRA It should not be objected, that interest by enjoyment should be included under *caṣica*, because VIĀSA intends a generic description (XXXIX) Why then is interest by enjoyment specially mentioned by CATYAYANA (XXXVII 3) under another name, ' use of a pledge ? ' and why a *c caṣica* and *bhoga-labha* separately mentioned by VĪRĪHASPATI (XXXV) ? but sages cannot be censured for the exercise of their *legislative* authority in making a distinction, for the sake of the rule to be delivered, that a pledge is not released, so long as the debt be not wholly discharged Corporal interest, hair-interest, and interest by enjoyment must be paid, so long as the principal remain unliquidated (XĀXV 6) If the payment of hair-interest happen to be discontinued at the end of a few days, or if the corporal interest be not received, or if a pledged field or the like be damaged by the act of God or the king in such cases when the debt is *afterwards* liquidated, hair-interest, calculated from the date of the loan, must be paid, the value of corporal interest must be made good, another pledge must be delivered for use and occupation or, if the debtor do not *deliver another pledge*, the value of usufruct must be made good A full explanation of pledges may be seen under their proper head (Chapter III)

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If such be the case does it not contradict the text of MENU (XLIII). for the inferible sense of the law is that a creditor should not receive more than double the principal paid at once ? No, for the original period for the receipt of hair interest is *the close of each successive day* the text is only applicable to other cases Is it not seen in some countries, that hair interest is not received so long as the principal remain undischarged, but is only received for a stipulated period, or for a certain number of days ? To re-

concile this apparent difficulty, the text of NAREDA is adduced, " but the rate, customary in the country, where the debt was contracted, may be different ' (XLV)

If a debt have been contracted on a promise of hair-interest; and half the principal have been discharged at the end of a long period, what kind of interest is afterwards adjudged? It is fit, that half the hair-interest should be paid, for it is not proper, that the whole interest be struck off when the whole principal is not discharged, nor that the whole interest be paid, when some part of the principal has been discharged and in the case of corporal interest also, if the use and profit of a female buffalo affording much milk, or of a horse or the like carrying great burdens, have been assigned as *cayica* interest, in that case, a part of the principal being liquidated, the debtor may assign the use and profit of another milch buffalo or of another horse or the like, and not allow the profit of that horse and buffalo, for there is no law to show the necessity of allowing the use and profit of the thing originally assigned

BUT, in the case of (*ad'hibhoga*) a loan on the use of a pledge, a debtor cannot obtain the release of the pledge however valuable, so long as the principal remain unliquidated (CII) For this reason, corporal interest and interest by enjoyment have been distinguished and the distinction is well explained as consisting in the existence or non existence of a contract of hypothecation

WHERE the harvest is fixed as the period of a loan in grain, under the rule of HARITA (XLIV 2) as expounded in the *Retnacara*, the creditor can only receive double the principal *in kind*, interest therefore cannot, in this case, be received at the rate of an eightieth part and so forth because the general law for an eightieth part is opposed by the special rule of HARITA. This inference should be questioned, for such is not the meaning of the *Retnacara*, the rule of HARITA is there inserted under the head of (*cayica*) stipulated interest, and stipulated interest does not exclude the rate of an eightieth part and so forth for the grounds of excluding the rate of an eightieth part and so forth, another authority than scripture must therefore be established.

established The rule of HA'PITA should for this reason be considered as relating to stipulated interest regulated by the practice prevalent among former eminent persons, not as establishing a rate for interest, on his own authority Accordingly, should any trader borrow grain on a stipulation for interest at the rate of an eightieth part and so forth, and selling it conduct commerce, even that is a fit *transaction*

How then should the text of NAREDA (XLV) be applied? For it is thus expounded according to the *Retnacara* 'this rate of interest, an eightieth part of the principal and so forth, is universal, because it is authorized by the law, but a rate, fixed by the immemorial custom of a country, is different therefrom, and is not universal, for such local custom only subsists in particular countries accordingly in some districts grain is currently received back with an advance of half the principal, in others, with a quarter but, if it were the custom of countries, that twice the principal alone should be accepted, it would be so in all countries This objection is not well founded, the particular practice of one country is stated in the rule of HA'RITA, not an universal rate

GRAIN doubled at the harvest is not the highest *limited* interest, but is either legal, or stipulated interest, according to the opinion *which may be followed* The highest interest *stated* trebles the principal, that is, so much as trebles the principal is the highest *allowable* interest " So, of wool and cotton, that is, on these, as on grain, so much interest, as trebles the principal, is the highest *allowable* interest, and interest doubling the principal is different

" Wool, or hair of sheep and the like," in answer to the question, when is the principal doubled, since there is no harvest of wool? the sage adds, " in one year" (XLIV) In regard to fibres of grass and the like it is also the same " in one year" is understood, and grass and the like are also similarly doubled in one year, and some hold, that the highest interest on grass and the like is eight fold of the principal But others think grass and the like are increased eight fold, and bear interest no longer than until the debt be made octuple such therefore is the highest interest on these articles,

articles, and the word "so" is not extended to this part of the text, *to declare that interest on grass doubles the principal in one year.* This is founded on the coincidence of the text with that of VRĪHASPATI (LXVII), for "length of time" there denotes the highest *limit* of interest. Why the text (XLIV) is expounded by CHANDESWARA, "on grass and the like the interest is eight fold for one year," may be questioned.

IN practice the receipt of grain doubled at the time of harvest is very reprehensible. Its partaking of the nature of (*carita*) stipulated interest is the ground of this notion, since no other grounds of it are perceived. Or interest on grain doubling the principal at the time of harvest is named usury.

### XLIX

NA'ĪREDA — BUT the *rate* of interest, which has been mentioned, is considered as usury on grain \*

THE meaning of the text of VRĪHASPATI (XXXV 7) is this, "the use of a pledge after twice the principal has been realized, and the other two cases there stated, are usurious," this is one proposition that usury is reprehensible, is another proposition *of the text*. Consequently, the receipt of grain doubled *in one season* being usurious, it follows that it is reprehensible. But the receipt of interest at the rate of an eightieth part and so forth should be held blameless, by reason of the practice established by eminent persons and interest on grain, doubling the principal appears to be (*cārita*) stipulated interest, else it would be exclusive of the six sorts of interest *propounded by sages*.

UNDER the term "grain" pulse and the like, as well as barley and the rest, are comprehended, for AMERA says, "pulse and the like are grain in the pod, and barley and the rest, are grain in the ear."

IF those, who travel through forests and the like, borrow grain at what rate should interest be paid? Whatever interest they settle such interest only should

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\* The last term of the text which is quoted is LVIII 2



be paid (XXXIII). But, if no interest be settled, then indeed, since there is no law for the receipt of more than double the principal, interest only doubles the debt. It should not be argued, that the text of HĀRĪTA (XLIV) ordains twice or thrice the principal payable only by such as traverse forests and the like. No author has so explained the text ; but, without specifying the eightieth or other legal rates, it marks the interest usually paid by all persons on *loans of grain*.

SOME lawyers remark ; when a man has borrowed grain to be repaid two fold, but is unable to discharge the debt at the time of harvest, and, the debt long remaining unpaid, if arbitrators adjudge the payment of three times the principal, at the *current* price of a particular month, together with interest, in that case the trebled principal is suggested by the texts of HĀRĪTA and others (XLIV &c.) ; the valuation is grounded on local custom ; and the interest is compound interest : but if they adjudge payment of four times the principal with interest, the quadrupled principal is suggested by the text of VRĪHASPATI (LXIII).

YET in fact all this depends solely on local custom ; for the text of HĀRĪTA, and that of VRĪHASPATI, propound the highest legal interest. At the fit period for limited accumulation of interest, whether three times or four times the principal be then received, the interest is legal ; but the receipt of compound interest, antecedent to a promise from the debtor, is not authorised by law. The fit period for limited accumulation will be declared under the title of limits of interest.

ADMITTING that compound interest is reprehensible by general law or local usage, *still the text* (XXXV 7), *which declares usurious further benefit* after the principal has been doubled, intends loans in gold or the like ; for, since the highest accumulation of interest on clothes and other commodities is declared to extend to three times the principal and so forth, it is wrong to censure the receipt of three times the principal *in such cases*.

A Brāhmaṇa asks a loan from another Brāhmaṇa, and the lender, exacting a stipulation for interest at the monthly rate of a *pana* in a *purāṇa*, delivers the  
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loan ;

loan, and the other pays the debt within the year, is the receipt of such interest, in this case, reprehensible or not? It is said, the receipt of such interest is evidently immoral, since (*carita*) stipulated interest itself is immoral, according to the gloss of CULLŪCABHATTA on the words "any interest which is unapproved (ALI), and it is held so by MISRA, because the borrower is oppressed by the exaction of excessive stipulated interest and the like

PERIODICAL interest and corporal interest are also termed immoral by CULLŪCABHATTA how does that apply, for, if the borrower discharge the debt within the year and pay suitable interest, there is nothing blamable in *the receipt of that interest*? The answer is, under the authority of the text only, *but* it is not deemed immoral if received from time to time, and the text of VRĪHISPATI is adduced to connect the sense, showing the immorality of periodical interest and the rest, in certain circumstances, not of stipulated interest, *which is universally censured*. Accordingly CULLŪCABHATTA says, "stipulated interest is immoral, even though it have been *freely* settled by the debtor in a time of extreme distress, and by the creditor through kindness. It is consequently an improper proceeding of a lender, wilfully to violate the law and exact a promise of more than legal interest. On other expositions also, since the rate of an eightieth part and so forth is alone legal as the primary rate, the receipt of stipulated interest at any other rate is not laudable

If a debt be contracted with an agreement in this form, 'at the end of three months I will repay one coin and a quarter, lend me now one coin,' the interest amounting to a quarter of the debt is (*carita*) stipulated interest, for the rate of interest and period of the loan are settled by the debtor. In the case proposed by CHANDESWARA, interest on a loan advanced with a previous stipulation in this form, 'if thou wilt pay interest during one year, or half a year or the like, then only will I advance the loan' is also a sort of stipulated interest for, in this case, there is a promise of paying *a certain amount of* interest at the rate of an eightieth part and so forth. But in fact reason shows, that excepting the *regular* method of receiving the principal with suitable interest, every dissingenuous proceeding is immoral

VIII. *On the assignment of bonds, &c.*

IN some instances, a creditor has demanded his money from his debtor, *in these words*, " pay the debt of a hundred *suvernas*, which is due to me," but the debtor has not been able to discharge it; afterwards, the creditor, reduced to poverty by the circumstances of the times, or *even without necessity*, of his own accord, sells the written contract for that debt to some *other person*. this practice is not immoral, for it is not forbidden by the law, nor does it distress the debtor.

To the question, what is sold in the case supposed? The answer is this; not the mere written leaf, for it could not bear so high a price, nor would the purchaser, on a purchase of the written leaf only, be entitled to receive the sum stated in the writing. Nor *is* the debtor *sold*; for the creditor has no property in *the person* of his debtor. Nor *is* the money, *which has been lent* by the creditor, *sold*; for *his property* in that money is already divested; or, even though it be not *wholly* divested, the seller has not at that time an *undisputable* property therein. Nor *is* the money, which will be *subsequently* paid, and which is receivable by the creditor, *sold*, for it cannot in such a case be money receivable by the creditor, since the purchaser, *not the seller*, will have property in the money, which will be paid by the *present user or debtor*. It is therefore held by some lawyers, that the money, which will be paid by the debtor, is acknowledged as the transitory property of the lender, but, in consequence of the price now received and of the agreement made to that effect, that property will be divested, and transferred to the purchaser accordingly a sale, consisting in the receipt of a price, is now established from the consequences which are to follow, by means of *taking into consideration* past events \* and the seller has property in the price *received*, for, in consequence of his present expectation of a future receipt, the buyer assents to the transfer of property in the price to the seller. But that is wrong, for, should the debt be never actually paid, in consequence of the debtor's decease or the like, such a transitory property could not be

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\* THIS philosophical opinion to which I conceive, this alludes, is more expressly stated in other places. A past event, that is, its completion exists metaphysically as a cause of future events. Strict logicians do not admit this metaphysical existence, and are therefore at a loss to connect causes and effects nor immediately consecutive. To solve the difficulty they have recourse to the relation between cause and effect, which they place, in philosophical arrangements, under the category quality

established since the money payable by the debtor is become null, the sale of it is also null, and the receipt of the price would be therefore invalid.

We think, that this is a secondary sale of the promise of payment, like a gift, or sale, of *moral* property. Thus, after the receipt of a loan, the lender's property being divested, and property vested in the borrower, the promise of payment is the only ground for the repayment of the loan when its period has elapsed, and that promise disposes the debtor to give effect to the creditor's *revivable* property, through fear of incurring guilt by withholding payment of the money due to the creditor, or in consequence of a complaint preferred before the king or the like. In the case supposed, that *promise*, bought by any person, would induce guilt in the debtor if he withheld payment of the debt from the person who had purchased the promise, and exciting his apprehensions of incurring such guilt, or by means of a suit preferred before the king, or the like, it disposes the debtor to give effect to the purchaser's *concurrent* property.

It should not be objected, that payment made to the purchaser would be a violation of promise on the part of the debtor who had said *to the creditor* "I will pay the money unto thee." It is a rule, that the reason of the law extends to the representative. There is no breach of promise in his paying the money to the purchaser, who is the representative of the creditor; as there is none on the part of him, who has promised to give jewels and the like, and who pays their value.

When a field or the like is sold, an interest of the nature of property, similar to the former owner's property, is vested by the sale in the other party, but, in this case, by what secondary notion of a vested interest, does it become a secondary sale. From the secondary notion of something producing a lien on the guilt of the debtor if he withhold payment of the money, it is *supposed to be* a secondary sale. Consequently, should the debtor and his offspring happen to die without paying the debt, the loss falls on the purchaser, as in *all Law falls* on a creditor who had not sold *it* *divested*, but, if a thing sold, yet remaining with the seller, be destroyed by the act of God, the price must be refunded by the seller.

IN this *assignment of bonds*, one form is a sale made with a written contract previously executed ; another is a sale made in the debtor's presence, or with his knowledge ; another *again* is a sale before witnesses ; these and many other forms regulated by the custom of the country, such as a sale authenticated by an unattested instrument in the handwriting of the party, or his own recovery of the debt and payment of it to the purchaser, may be understood by a simple exertion of intellect. The form is also similar in the case of hypothecating a written contract of debt : but with this difference, that, if the debtor happen not to pay the sum borrowed by him, the intermediate user *or debtor* must make good the debt, out of his own funds, to the ultimate creditor ; and the promise of payment concerns the lender only, but is in the power of the ultimate creditor ; consequently the debt cannot be received by the lender without the assent of the ultimate creditor.

SOME person, applying to a merchant who lives by moneylending, says, " deliver me cloth to the value of a thousand *suvernas*, and let that value remain a debt due from me ;" on those terms giving a writing he takes the cloth : what does the value of it become ; for no money has been paid ? On this doubt, it is said, the price of the commodity, which was sold, is a debt mentally contracted ; interest must therefore be paid on the price of the commodity.

Is not the sense of the word (*iīna*) debt, ' money or goods delivered and producing gain to the lender in consideration of its remaining for a time with the debtor ?' but, in this case, since the price of the cloth was not then paid, it could not be delivered, and the requisites of a debt cannot therefore exist. *The objection is not well founded ; by fiction there may be a delivery of the price of the cloth, as there may be a fictitious delivery of gold or the like given by way of gratuity, though it be not actually produced.*

IN the parallel case proposed, there is, on the part of the votary, a present act of volition to annul his own property and vest property in another, which amounts to gift, and is not imaginary ; but here, since there is no such money as that, in consideration of which property shall be vested in the buyer,

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WHEN a field or the like is sold, an interest of the nature of property, similar to the former owner's property, is vested by the sale in the other party, but, in this case, by what secondary notion of a vested interest does it become a secondary sale. From the secondary notion of something producing a lien on the guilt of the debtor if he withheld payment of the money, it is shown to be a secondary sale. Consequently should the debtor and his offspring happen to die without paying the debt the loss falls on the purchaser, as it would have fallen on a creditor who had not sold the demand but, if a thing sold, yet remaining with the seller, be destroyed by the act of God, the price must be refunded by the seller.

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after the property of the seller has been devested, the buyer's property is null, and, the intended delivery being imaginary, is it not actually invalid? Admitting the objection, "deliver" is secondary in the definition of debt and, in the case stated, the thing lent becomes the property of the buyer, *whether it be the price or value of the cloth which is lent, or only the cloth sold, as in the case of compound interest* This subject has been further treated by me (JAGANNA T'HA) in the *Rinavadari'ba* In the case proposed, there is a mixed transaction of loan and sale

*Form of a writing for a debt sold*

AFTER writing on the assignment the name of the lender and so forth, it is usual to write, 'this sale of a written contract of debt' and that is proper, for by selling the written leaf with the letters inscribed on it, the sale of the thing written is also valid, as the approach of horns is *noted* when it is said a horned animal approaches Thus, since letters must extend to the words, the sale of the words *constituting a promise* is certainly valid Or it may be written, "this bill of sale of a debt," by this the sale of an unwritten debt may also be effected and it is equally proper in the present case.

ON the reasoning above stated although the thing promised might not be sold, the promise may be sold, and here the meaning of debt is money received after such previous promise The debt belongs to the purchaser alone, hence, if it happen to remain unpaid, the sin consists in not paying the debt due to the purchaser, not in withholding a debt due to the seller But such interest only, as had been promised, should be paid, not interest at the rate of an eightieth part and so forth, when stipulated interest had been previously promised, and no express declaration was made concerning interest at the time of the sale If a debt be sold by a *Brâhmana* creditor to a *Sûdra*, interest must be received at two in the hundred, the regular rate in the order of classes, not at five in the hundred for interest is settled by the agreement made when the debt is contracted Nor should the purchaser then exact a promise of greater interest, for that loan had been already advanced by another person But, after the lapse of the period stipulated, should the debtor be unable to discharge the debt, the purchaser, who is

become

become the creditor, may, according to some opinions, exact a promise for stipulated interest or for the *cāyicā* of NA' REDA, as explained by CHANDEŚWARA, at the rate of a *pana*, or half, or other fraction of a *pana*; for that is the proper time for a stipulation of such interest, and the debtor is then in the power of him, who purchased the debt.

ALTHOUGH there be no express text of sages on the present subject, this and other rules for contracts valid by usage are deduced from the authority of reason copying sacred law for the sake of legal decision in cases of doubt. A portion of the subject has been inserted by way of illustration; other points may be similarly reasoned by the wise.

*Form of a writing for a debt pledged.*

AFTER writing the name of the lender and so forth, and subjoining, "this contract of debt on the pledge of a debt;" it should be added, "a debt of so much is contracted by me, giving unto thee, as a pledge, a debt amounting to such a sum contracted by such a one, on an agreement for so much interest, in such a year, month and day, and in the presence of such and such persons," and so forth: it should be *further* written, "if this debt be not discharged by me on such a day of such a year, then the debt due to me by such a person shall be thine," and so forth, according to circumstances. This and other forms, as suggested by common sense, are stated by way of example, to guard against defective writings.

IN this case the first debt should not be recovered *from the debtor*, until the close of the period for which the second loan is made. But, if *no more than* half or other portion of the original debt were made over as a pledge, then a proportionate part may be recovered from the debtor; and it should be inserted in the instrument. However, it is not proper to fix a period for the second loan extending beyond that of the first loan. This and other points may be inferred from reasoning.

*Form of a writing for a price lent, or credit given in consideration of interest.*

IT should be a document of the debt, not a document of sale only; because the sale is shown by the declaration of the debt; for the declaration in

words runs thus, " I borrow the value of this commodity, *so and so*, which is bought of you." It should not be affirmed, that *it might be drawn conversely*; and thus the instrument would be only a bill of sale. Were it so, the debt would not be *the chief object of the writing*, and the clause fixing the period *of repayment* and so forth could not be well arranged. But, should it be thought necessary to authenticate the purchase, a separate document would be proper. To expatiate *in this place* would be vain. Sales and the like may be similarly authenticated by bills of sale: *but* that should be hereafter discussed under the head of sales and so forth.

#### IX. *On usage in general.*

DOUBTS, occurring on many subjects, have been solved by reference to practice; a decision being therefore valid when founded on the practice observed to exist, is not law useless? Practice, which is founded on law, prevails; hence usage, inconsistent therewith, must be abrogated. But where no express law is found, one should be established on approved usage.

#### L.

MENU:—WHAT has been practised by good men and by virtuous *Bráhmanas*, if it be not inconsistent with the legal customs of provinces or districts, of classes and families, let him (*the king*) establish.

WHAT is not inconsistent with the usages of provinces, classes and families, and has been practised by virtuous and learned *Bráhmanas*, though it be law not found *in codes*, let him establish.

CULLÚCABHATTA.

By the expression, " law not found in codes," it is intimated, that law should be established on approved usages: else it would have been said, " if there be no *express* law." But the practice of *forbearance*, which has been introduced by good men, through tenderness, in consideration of the debtor's inability to pay and so forth, should not be abolished. The use of law is only to prevent the introduction of multifarious practices at the will of men of the present

present generation. Where many texts of law are inconsistent, or many interpretations of the same text are contradictory, usage alone can be received as a rule of *conduct*: and practice, which differs in some respects from positive ordinances, but is not remote from ancient legislation, can only be confirmed by its *general* connexion with law. Consequently that practice, which is conformable to law, is best; but that, which is inconsistent therewith must be abolished: yet, if that may not be, practice inconsistent with law must be nevertheless retained. But where no *positive* ordinance is found, there is nothing inconsistent with any known law, and in that case approved usage alone must regulate *proceedings*. Hence it is said, "human tradition is not unfounded." Still, however, the example of learned and virtuous *Bráhmaṇas* should be followed for the sake of prosperity; not the practice of immoral and foolish *Súdras* and the rest. This and other points may be viewed by a man's own judgment: and it must be so understood in all matters, not in cases of debt alone. Thus have been discussed the various sorts of interest.

## SECTION III.

## ON INTEREST SPECIALLY AUTHORIZED AND SPECIALLY PROHIBITED.

## ARTICLE I.

## ON DEBTS BEARING INTEREST WITHOUT AN EXPRESS AGREEMENT.

## LI.

CA'TYA'YANA:—THOUGH a loan be made *expressly* without interest, yet, if the debtor pay not the sum lent after demand; but *fraudulently* go to another country, that sum shall carry interest after a lapse of three months.

*Uddhāra* (the term employed in the text) here signifies money received without a promise of interest. "If he go to another country," if he abandon the country in which the creditor resides, that debtor should *immediately* pay the sum lent.

The *Retnācara*

IF he abandon the country in which the creditor resides, that is, if he go to another country.

"AFTER a lapse of three months," if it have been demanded, *it shall bear interest* at the end of three months

The *Ghaintam*

THAT is, if the sum lent be demanded but not paid, *it bears interest* after a lapse of three months from the date of the loan. In this case, a loan has been amicably made by the creditor without any stipulation for interest; it is proper, that no interest should be paid by the debtor while friendly intercourse is maintained but if he do not pay it after demand, the friendly consideration no longer subsists, and interest should therefore be paid. In that

that case it commences at the expiration of three months under the authority of the law. However, should he fix a near term after the first demand, with the assent of the creditor, and pay it at that term, no interest accrues: accordingly it is said in a text, which will be cited, "after more demands than one." But no interest accrues within three months, even though the debt be repeatedly demanded; for no law *has authorized it*.

If it be asked, what sort of interest? *the answer is*, interest at the rate of an eightieth part and so forth, as prescribed by law. But CULLÚCA-BHATTA expounds the text of MENU (XLII) as relating to this case; "interest exceeding the fixed rates, or those prescribed by law, and contrary to, that is different from, interest agreed on, or, in other words, interest not agreed on, is invalid and cannot be *exact*: interest not agreed on cannot be *exact* at rates not declared by the law; for there can be no interest, which is neither settled by the parties, nor prescribed by law." Consequently, in a case where none was agreed on, interest should be received at the rates prescribed by law, in the order of the classes. So *the following text*;

## LII.

VISHNÚ:—AFTER the lapse of one year, debtors, *who have not acted fraudulently*, must pay interest, as allowed, even though not agreed on *at the time of the loan*.

"As allowed;" at the rate of two and three in the hundred and so forth, in the order of the classes. He declares another distinction in respect of interest without a special agreement.

## LIII.

VISHNÚ:—*Sages have declared it* an usurious mode; yet a lender may exact five in the hundred.

"FROM twice-born men," must be supplied in the text: hence it is an usurious mode, originating with abject persons. MENU and the rest have declared it *so*: this must be supplied in the text. Consequently a lender may

may exact, even from a twice-born man, the interest which is receivable from a man of the servile class, or five in the hundred; but such conduct is immoral: and this must be understood of a sum lent without any agreement for interest, and which has been demanded.

## LIV.

CĀTYĀYANA declares it:—WHAT has been amicably lent for use, shall bear no interest, until it be demanded back; but if, on demand, it be not restored, it shall bear interest on its true value at the rate of five in the hundred.

THE rate of five in the hundred, which is mentioned in these texts, supposes a debtor of a twice-born class; for, if it concerned a debtor of the servile class, it would not exhibit an usurious transaction, but would be a vain repetition of the rate of five in the hundred. Hence it is CULLŪCABHATTA's interpretation, that, because a lender may exact five in the hundred from a debtor of a twice-born class, therefore do sages term it an usurious way.

It is, however, proper to consider the phrase, "the lender is entitled to five in the hundred," as a mere repetition of the rate of interest receivable from a debtor of the servile class, for it is difficult to establish another rule of interest; and the sense is, sages have propounded this rate of interest, as the way of moneylending; therefore is a lender entitled to it. This may be argued on the authority of VĀCHESPATI MISRA; for he says as much in his gloss on a *subsequent* text (LVI 2): and it is proper to establish the same induction in the present instance; for there is no difference: and this interest should be understood in all cases where no agreement for interest was expressly made.

If a debtor, having received a loan free of interest, go to another country after the debt has been demanded, interest is ordained after the lapse of three months; the sage also propounds interest in the case of a debtor who remains in the same country.



## LV.

CĀTYĀYANA:—A DEBTOR, who, even residing in his own country, pays not *the debt* after more demands than one, shall be forced, however unwilling, to pay interest on it, though not stipulated, *after the lapse of one ear.*

MEANING the very same case, VISHNU says in the text above cited (LII), “ after the lapse of one year.”

ACCORDING to MISRA, the phrase “ *if he go to another country* ” (LI) is indeterminate, for, citing the last text (LV), he says, all this supposes payment fraudulently withheld, but, in a case void of deceit, the rule of VISHNU (LII) is *applicable* ” Yet, in fact, a journey to another country is equivalent to fraud, but he, who resides in his own country, is not *supposed* to practise fraud but only procrastination. Both texts therefore coincide. Thus, the two different periods for the receipt of interest are regulated by the practice or omission of fraud, instanced in the *debtor's* journey to a foreign country, and *his* residence in his own country. It is then only considered as a journey to another country, when the debt cannot be demanded at the place where the debtor resides, not when he merely quits the village, and so forth. Even though both parties reside in the same town, yet if the debtor abscond whenever he sees the creditor, it is *the same with* a journey to another country. Or, if both reside in a foreign country, it is a residence in the same country. Hence both texts coincide in considering the fraudulent intent of the *debtor* and, if a debtor, from whom payment is demanded, go to another country after appointing a time of *payment*, and returning pay the sum at the time appointed, there is no fraud.

“ PAYS not ” (LV), ‘ the *debt*, or principal sum,’ should be supplied in the text. “ After more demands than one,” after repeated demands. The reading approved by CHANDĒSWARA is *ach* instead of *ābarte*, still the meaning is “ must pay to the creditor.” Consequently, the ascertained sense of the text is this, in the case of a loan made through friendship, if it be not paid after demand, and any fraud be practised, interest, though

not *pres* *fy* agreed on, accrues after the lapse of three months, but, if no fraud be practised, after the lapse of one year

## LVI

CAṬYĀYANA —SHOULD a man, having bought a marketable commodity, *fra dulently* go to another country, without paying the price of it, that price shall bear interest after three seasons, or *six months*

tioned, why the terms should not be explained, in the apposition named *Carmaḍaraja*, "remaining interest"

HERE it should be remarked, that, according to many commentators, the period when the principal is doubled, excepting this case of periodical interest, is the time when the debt should be paid *by the debtor* and interest be received *by the creditor*. If a debtor do not pay it although it be then demanded, but put off payment, saying "it shall be paid to morrow, or it shall be paid the day after to morrow," in that case legal interest accrues after six months. "balance" is here a general instance. According to others, if an honest debtor, being then unable to discharge the debt, stipulate interest and renew the contract interest commences from that date and is wheel interest. Since interest is here stipulated, the rate of two in the hundred, and so forth, is not applicable to this case.

Or it may be thus explained: if a balance of interest only be due, there is no wheel interest. For this reason the word 'balance' is here employed. But, if the whole interest be due interest also accrues after the lapse of six months under the rule exemplified by the case of the staff and bread\*. But if the interest have been paid, and the principal only be due, it bears no interest, however long it remain unpaid (XLIII). In this case it must have been particularly specified by the parties, "that, *which remains due*, is the principal, this *which is paid* is the interest." In the case of periodical interest also if it be not regularly paid month by month, this text (LVI) is applicable.

"A COMMODITY sold, and the price of a commodity purchased (crayam vicriyam†), 'That which is purchased (*crīyate*) is (*craya*) the commodity that for which a vendible commodity as a cow or the like is sold (*vicriyat*) is (*vicraya*) the price. Here also three seasons are understood. Therefore on a bailment on the balance of interest on a vendible commodity and on the price of a commodity, if they be demanded

\* The rule may be thus expressed: the greater includes the less. The example alluded to is this: a boy takes away the bread cooked with the staff of conduct; the staff was no less to be broken than the bread it had so led.

† In the usual acceptation the sense would be purchase and sale.

not *previſly* agreed on, accrues after the laſe of three months, but, if no fraud be praſiſed, after the laſe of one year

## LVI

CĀTYĀYANA —SHOULD a man, having bought a marketable commodity, *fra idulently* go to another country, without paying the price of it, that price ſhall bear intereſt after three ſeaſons, or *ſix months*.

२. *Even without a journey to a foreign country, a deposit, the balance of intereſt, a commodity ſold, and the price of a commodity purchaſed, not being paid or deli red after demand, ſhall bear intereſt at the rate of five in the hundred, if the debtor be a Sudra "*

it is only her value that is divided, as has been already mentioned. If a man, having bought a cow, go to another country without paying the price, must the cow or the price be delivered with interest after three months? It is said, the price only must be paid with interest; for, after the purchase, the cow became the property of the purchaser. Accordingly, on religious occasions, people dismiss bulls and the like, which they have purchased for a price promised *but not yet delivered*. Purchase is only forfeited by neglect during a specific time. To expatiate would be vain. But he, who, having sold a cow and received the price, does not deliver the cow sold, must give her with interest after six months.

IN the preceding text a demand must be absolutely understood: if the thing be demanded but not delivered, it bears interest; not, if no demand be made. Again; under the expression "go to another country" (LVI) interest after three seasons is ruled, if fraud be practised, by the same reasoning with that above stated.

#### LVII.

CĀTYĀYANA:—BUT he, who, having received a chattel lent for use, goes to a foreign country without restoring it, must pay interest, according to the value of it, after three seasons or six months.

"A CHATTEL lent for use" (*yāchitaca*); a thing intrusted to him.  
The *Retnācara*.

MEANING ornaments or the like for decoration, which a man, asking (*yāchitwā*) from any person, has obtained. In regard to this, the same practice prevails with that respecting *other* bailments.

BUT MISRA says, the *following* texts of NĀREDA concern chattels intrusted for use.

#### LVIII.

NĀREDA:—THERE shall be no interest, without a special agreement,

and not delivered, interest must be paid after six months, at the rate of five in the hundred by a defaulter of the *five* class, for it coincides with the rate prescribed for that class (XXIX 2)

MISRA

SOME hold, that, if three seasons must be also understood in this text, the preceding text would be superfluous, it is therefore proper not to connect the terms with the three seasons there mentioned. How then is the period determined, when interest shall commence on the balance of interest and so forth? Being mentioned in the same text with *the price of a commodity*, interest commences on these, as on the price of a commodity, after three seasons.

THAT should be questioned, for, since the phrase must be separately referred to "deposit" and the rest there is no difficulty in this construction of the text, "on the price of a commodity (*ucraya*) interest accrues after three seasons." Why has not the sage inserted in this text, "after three seasons," and, "go to another country" and omitted those terms in the preceding text? *The object is* not admissible, for with sages there can be no expostulation.

†

By saying, "must be paid by a defaulter of the *five* class," it is established, that, in the case of amicable loans, interest at the rate of five in the hundred shall only be paid by a *Sūdra*, for interest on *such* a loan, and on deposits and the rest, can only be payable by him, after the lapse of three months and six months respectively. Therefore a man, who, after receiving the price of the cow, does not deliver that cow when demanded, though sold by him and a purchaser, who does not pay on demand the just price of a commodity purchased, must pay interest at the rate of five in the hundred *and so forth*, in the *inverse* order of classes.

The Retnākara

For a series may be either direct or inverse

Does the cow, or the price of the cow, bear interest at the rate of five in the hundred? It is the same thing; for, since a cow cannot be divided,

might signify "interest not settled with the consent of the borrower," and, as here used, "that, which has not been settled to bear interest with the consent of the borrower."

"USURY on grain" (LVIII 2); on grain lent without any agreement for interest, but not repaid on demand. The rate of interest, which has been declared by sages, such as twice the principal and so forth, is deemed usury. On a loan advanced with a declaration, that interest shall on no account be received thereon, should the creditor afterwards require interest, from the circumstances of the times, or in consequence of a breach of promise, no such interest is allowed: though not declared by the text of any sage, this may be deduced from reasoning by wise investigators.

ACCORDING to MISRA, interest accruing, in all these cases, after the lapse either of three, or of six months, must be understood of payment fraudulently withheld; but, if no fraud be practised, interest commences after the lapse of a year, under the rule of VISHNU above cited (LIV). In fact a journey to another country indicates fraud; and another country is that, during the debtor's residence in which the creditor cannot demand payment of the debt: herein MISRA and CHANDÉSWARA concur. But according to CHANDÉSWARA a debtor offends not by going to another country on urgent business, as has been already noticed. In the case of a commodity purchased and the rest, interest also commences after the lapse of a year, if the debtor have not gone to another country; this is deduced from the expression in the *Vrūda Ghintāmeni*, "in all these cases;" and is not disallowed by CHANDÉSWARA, CULLŪCABHATTA and the rest.

ON a loan made without interest, and of which payment is withheld after demand, interest accrues at the end of three months; on other things fraudulently withheld after demand, such as a deposit, a bailment for use, or the like, interest accrues at the end of six months; but not restored through inability, and submissively refused, they bear interest after the lapse of a year. Such is the opinion of CHANDÉSWARA, CULLŪCABHATTA, MISRA and others. If payment be withheld by one  
taking

agreement, on valuable things lent through friendship *for use, not for consumption*, but, even without agreement, property so lent bears interest after half a year;

2. This is declared to be the legal rate of interest on amicable loans. But the *rate of interest*, which has been mentioned, is considered as usury on grain.

HE thus expounds the texts the word “give” here signifies intrust or lend *for use*, there is not consequently any contradiction to the text above cited (LI).

SUCH being the case, it is made evident, that a loan for use, which is similar to a deposit, bears interest after six months, if it be not restored *on demand*. But the text of NAREDA is cited by CHANDESWARA, after discussing loans for use, with the text of VISHNU (LII) interposed. This opinion is thereby intimated, a loan advanced *free of interest*, in consequence of some apprehension from human causes, bears interest in three months after it has been demanded, but a loan which is advanced through friendship, bears interest in six months after it has been demanded. The text of CATYAYANA (LIV) is cited in the *Vivada Chintamani*, and by CULLĀBHATTA, for this import, and *this* text must be similarly expounded. This observation of some lawyers is not *well founded* for CHANDESWARA has thus arranged *the compilation* inserting all the texts of CATYAYANA, he quotes texts of other sages, else, if the text of CATYAYANA (LIV) had the same import with that of NAREDA, it would be wrong to interpose *another*. Therefore MISRA’s interpretation should be deemed right in this instance.

THE term “without agreement” which occurs in both hemistiches, signifies “not in any manner expressed in words,” *that is*, not stipulated hence, if interest have been expressed by the borrower, the creditor may exact some *interest*. “Without agreement” *may be explained* without a declaration of its bearing interest, without any stipulation of interest, for the particle A’ is explained by AMERA, assent or promise. Or the term might



debt has, or has not been demanded from one, who goes to another country, in regard to him, who resides in his own country, one case has been declared, *that is, the case* where the debt has been demanded, it is proper to refer the text of NĀREDA to the case of one, who resides in his own country, but from whom the debt has not been demanded. Were it so, what would be the rule where a demand was made after a lapse of seven months? In reply it is asked, why does the creditor neglect interest, to which he is entitled, under the authority of the text, after the lapse of six months? if through tenderness he exact not interest, the debtor need not pay it.

ON this exposition, the text of VIṢṆU (LII) concerns one, who has received a loan for use, and goes to a foreign country before it has been demanded, and the text of CĀṬYĀYANA (LVI) ordains interest, after six months, on deposits and the like *not restored* after demand. According to this interpretation, if ornaments or the like be asked and obtained for a nuptial festivity or the like, they are similar to a deposit, and are not loans, for they are stated by YĀJNYAWALKYA with deposits (Book II, Chapter I, 1-3). But if an agreement were made at the time of receiving a loan exempt from interest, or the like, in this form, "it shall be restored by me at the end of one year," in this and similar cases, if the thing be not restored after the period has elapsed, it then bears interest, and not after six months. This and similar rules may be deduced by the wise from arguments consistent with common sense. But the author of the *Mitacshara* is revered by CHANDEŚWARA and the rest, and is more ancient than they. Of the two opinions which should be rejected, which adopted in practice, must be determined from the difference of times and of places.

taking the protection of some person who may owe the creditor, how soon interest commences in such a case, is not expressly said by any author.

ACCORDING to the *Mitāṣṣarā*, interest is in some cases due without a special agreement, as is declared generally by NĀREDA (LVIII); but remarking, that "interest without a special agreement is in certain cases prohibited," the author of the *Mitāṣṣarā* subjoins, as a particular rule, the text *subsequently cited* (LXXI). Consequently, from the several applications of the general and particular rules, interest without a special agreement, accruing at a certain period on loans advanced free of interest, appears obviously suggested; but no interest, without a special agreement, on the price of a commodity and the rest. That, however, is not satisfactory; for interest without a special agreement is allowed on things amicably lent; and fines and the rest would be vainly included in the second text (LXXI). This text, therefore, is not opposed to the preceding text (LVIII); but it restrains a purchaser, who covetously demands interest at the same rate with loans, because a commodity purchased by him has long remained with the seller. Accordingly the text of CĀṬYĀYANA (LVI 2) has a similar import; and the same rule should be understood in regard to the price of a commodity purchased.

In this gloss the third measure of the text of CĀṬYĀYANA (LVII) is read "after the lapse of a year," instead of, "after three seasons." Consequently, should a man, who has received a loan exempt from interest, go to another country before it be demanded, *he shall pay* interest after the lapse of one year (LVII); but, if he go to another country without restoring it after it has been demanded, *he shall pay* interest after a lapse of three months (LI). The word "*jāḥṣṭa*" must signify a loan in general, instead of a chattel lent for use, for this text (LVII) is inserted after stating the text *first cited* (LI). If one, who remains in his own country, do not pay the debt after a demand, it bears interest from the date of the demand; for the text of CĀṬYĀYANA (LV) does not specify a period.

ACCORDING to this gloss, what is the purport of the text of NĀREDA (LVIII)? The answer is, two cases have been declared according to the  
deh

"STOPS when it doubles the debt;" accumulates no further. "Coral," expressed in the plural, implies "and the rest," by which shells are included *in the text*; for HA'RĪTA declares, that interest ceases when it has doubled the principal at the rate of eight *panas* in twenty-five *purānas*. (*Purāna* is a name for a certain number of shells). This induction is consistent with practice, and it is proper, that double the principal be the limited accumulation on shells, since no special rule has been declared. It is the same in respect of conchs and the like.

"OF the produce of fruit;" as cotton and the like. "OF the produce of insects," as silk and the like. "OF the produce of sheep;" as blankets and the like.

The *Retrācārā*.

# LXI.

MENU, stating generally, that "interest on money received at once, *not month by month, or day by day, as it ought*, must never be more than enough to double the debt, *that is, more than the amount of the principal paid at the same time*," adds a special rule; — ON grain, on fruit, on wool or hair, on beasts of burden, *lent to be paid in the same kind of equal value*, it must not be more than enough to make the debt quintuple.\*

"GRAIN;" as rice, barley or the like. "Fruit" (*ṛada*) or any thing produced from trees. Here "trees" is merely illustrative, for "the produce (*ṛada*) of a field" occurs in a text, which will be cited from GŌTAMA (LXII). "Wool or hair," what is afforded by sheep, *cows* and the like, as wool, cow-tails and the like; *as appears* from the derivation of the word (*lavan*) *what* is shorn (*lāyaté*).

The *Retrācārā*.

WHAT is shorn (*lāyaté*) is wool or hair (*lava*), such as wool and other hair on the body (*lavan*). CULLŪCABHĀTĪA.

\* THE first hemuśāh has been already quoted (XLIII).

## ARTICLE II.

## ON THE LIMITS OF INTEREST.

## LIX.

GŌTAMA:—THE principal can *only* be doubled by length of time, *after which interest ceases*.

THAT, which is lent (*prayujaté*), is (*prayoga*) the principal. The money lent can be doubled, that is, can only be doubled, else it would be useless to declare, that twice *the principal* may be received on account of the length of time *elapsed*. By the word “only” it is forbidden to receive more than twice the principal. Accordingly CHANDESWARA says, the word “or” in a text already quoted from VRĪHASPATI (III) is indefinite, and also suggests a debt doubled or the like “By length of time;” counting from a period somewhat less than sufficient to double the principal, interest ceases if the debt remain longer due. This is meant in a text cited from VRĪHASPATI (XXVI). Else the mention of double the principal in a text of law propounding right and wrong would be useless. The text cited from HĀṬĪTA (XXX) makes this evident, for the verb there used (*śanśhā*) signifies *stops* or “bears interest no longer.” and this interest, sufficient to double the principal, is the highest interest receivable on gems, gold, and the like, not on grain or the like, for *such limitation of interest on grain and the rest* is opposed by a special text, which will be cited.

CHANDESWARA remarks, “this concerns a loan of valuable things in general” by the term “in general” it is declared, that this text is a general law, it follows, that special rules are thereby opposed. Accordingly MISRA declares the full meaning; “this concerns gems, gold, and the like as ordained by CĀṬYĀYANA.”

## LX.

CĀṬYĀYANA:—FOR gems, pearls, and coral, for gold and silver, for cloth made of *cotton* the produce of fruit, or made of *silk* the produce of insects, or made of *wool* the produce of sheep, the interest stops when it doubles the debt.

“STOPS

" STOPS when it doubles the debt," accumulates no further. " Coral," expressed in the plural, implies " and the rest," by which shells are included *in the text*, for HARĪTA declares, that interest ceases when it has doubled the principal at the rate of eight *panas* in twenty-five *purānas*. (*Purāna* is a name for a certain number of shells). This induction is consistent with practice, and it is proper, that double the principal be the limited accumulation on shells, since no special rule has been declared. It is the same in respect of conchs and the like.

" OF the produce of fruit," as cotton and the like. " OF the produce of insects," as silk and the like " OF the produce of sheep," as blankets and the like

The *Retnācāra*

## LXI

MENU, stating generally, that " interest on money received at once, *not month by month, or day by day, as it ought*, must never be more than enough to double the debt, *that is, more than the amount of the principal paid at the same time*," adds a special rule; — ON grain, on fruit, on wool or hair, on beasts of burden, *lent to be paid in the same kind of equal value*, it must not be more than enough to make the debt quintuple.\*

" GRAIN," as rice, barley or the like " Fruit" (*ḍala*) or any thing produced from trees Here " trees" is merely illustrative, for " the produce (*ḍada*) of a field" occurs in a text, which will be cited from GŌTAMA (LXII). " Wool or hair," what is afforded by sheep, *cows* and the like, as wool, cow-tails and the like, *as appears* from the derivation of the word (*lava*) what is shorn (*lu*) *it*

The *Retrācārā*.

WHAT IS shorn (*lu* *yate*) is wool or hair (*lava*), such as wool and other hair on the body (*lōman*)

CULLŪCĀBHATTA.

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\* This first hemistich has been already quoted (XLIII)

“ HAIR” (*lava*), any thing to be shorn (*laviniyam*), except wool; that is, hair on the body (*loman*) and the like.

*The Prvada Chintāment*

“ WOOL or hair” (*lava*); cowtails and the like.

*The Dipacalica*

“ WOOL or hair” (*lava*), the fleece of sheep, the pod of musk-deer, and the like.

*The Mitacshara.*

ALL therefore agree, that the word “ *lava* ” is synonymous with *loman*, being derived from the same crude verb (*lu*, cut or shear) But MISRA thinks, hair other than that of sheep is meant in the text of MENU, because it is opposed by the text of CAṬYAYANA (LY) But according to the *Retnācara* and the rest, this text (LX) concerns cloth alone; it is almost expressly said so by CHANDĒSWARA.

“ BEASTS of burden,” employed for transport, as horses and the like On these, the interest of the loan must not exceed the quintuple, with the principal it must not amount to more than quintuple, it can produce no more. That the quintuple includes the principal is thus inferred as it is declared, that a debt is doubled in fifty months, and accumulation then stops, that is, interest ceases, and consequently the principal is one part, and the interest another part, which united make the double sum; so, in this case also, by parity of reasoning, the principal is one part, and the interest four parts, which united make the whole quintuple sum Accordingly, any such debtor, who has borrowed grain or horses valued at a hundred pieces of money, for interest at the rate of two in the hundred, however long the period of debt may be, can only be liable to pay grain and the like amounting in value to five hundred pieces of money, and no more

*The Retnācara*

HERE the rate of two in the hundred is a mere example; on a loan secured by a pledge also, where the rate of interest is an eightieth part of the principal

principal *by the month*, the interest can only double the principal which consisted of gems, gold or the like, and, by parity of reasoning, it can only make the debt quintuple, if it consisted of grain or the like for no other limit of interest is found in the *codes of law* VRĪHASPATI (XXVI), declaring that the principal is doubled even in the case of a loan secured by a pledge, states that alone as the limit of interest, and it concerns gems, gold, and the like, for it has the same import with the text of CA'RYĀYANA (LX)

ON this it should be remarked, say some lawyers, that the rule regards priests only, but, if the debtor be of the military or other class, interest must make the debt treble, quadruple, or quintuple, in the order of the classes else it would be a great disparity, that interest payable by a *Sudra* should cease after twenty months, and, payable by a *Brahmana*, after fifty months. That is wrong, for no sage has mentioned interest on gems, gold, or the like, more than sufficient to double the principal. As interest on a loan secured by a pledge stops at the end of six years and eight months, but, if there be neither pledge nor surety, at the close of fifty months; so, if the debtor be of the sacerdotal class, interest stops at the end of fifty months, but, if he be of the servile class, at the end of twenty months. there is no *unjust* disparity

INTEREST on grain or the like makes the debt quintuple in so much time, as is sufficient for interest to become equal to four times the debt, whether at the rate of an eightieth part and so forth, if a pledge or the like have been given, or at the rate of two in the hundred and so forth, if there be neither pledge nor surety, not in so much time, as would make *other* debts double else, since the law ordains monthly interest at the rate of an eightieth part and so forth, something less than twice the principal would be received on grain or the like, if the period elapsed were one day short of eight months above six years, but five times the principal would be received on grain and the like if the eighth month were completed, which would be a great disparity. Since fifty months and various other periods are not ruled *universally*, it is proper to affirm, that interest ceases at those periods respectively, when it has risen to so many times the principal

## LXII

GOTAMA.—INTEREST on milk or curds, on *the hair of goats and the like*, on the produce of a field, and on beasts of burden, shall rise no higher than to make the debt quintuple.

WHAT is produced from cattle (*pasórupajayate*) is (*pasupaja*) the produce of cattle such as milk and the like, excepting *however* clarified butter  
The *Ghntamam*

In the *Retiaccra* a gloss is found, ‘ milk, clarified butter and the like ’ It is liable to objection, for interest making the debt octuple will be declared for clarified butter

‘ HAIR ’ (*lóman*), wool, for AMERA explains wool, the hair of sheep and the like

“ THE produce of a field,” fruit produced from a field, as barley, wheat plantains, mangos and the like

The *Retiñcara*

IT is also proper to include grain *in general* under this term Interest on grain, making the debt quintuple, is declared by MENU and GOTAMA, but by VRĪHASPATI it is declared to make the debt quadruple

## LXIII

VRĪHASPATI — ON the precious metals or *gems* the interest may make the debt double, on clothes and inferior metals, treble, on grain, quadruple, so on fruit, beasts of burden, and wool or hair.

“ PRECIOUS metals, gold and silver

The *Retracara*

IT is a general expression comprehending gems and the like, for the rule coincides with that of CATYAYANA (LX)  
THE



THE term "inferiour metals" signifies *all* other minerals except gold or silver, namely copper and the rest.

The *Retnácara*.

EXCLUSIVE also of gems and the like, for otherwise it would contradict CA TYA YANA It is ordained by this text (LXIII), that interest on grain, fruit, hair or wool, and beasts of burden, may make the debt quadruple.

#### LXIV.

VISHNU, cited in the *Retnácara* — ON precious metals or gems, the highest interest shall make the debt double; on cloth, treble, on grain, quadruple, on fluids, octuple on female slaves or cattle, the offspring shall be taken as interest.

ON female slaves and the like, and on cattle, such as cows, female buffaloes and the like, which the owner, unable to maintain them, has lent to some person that they may be supported and bear offspring, allowing as the consideration of their support the mill of the female quadrupeds, or the service of the female slaves, and which have remained long with him, the offspring shall be the only interest, that is, no other interest shall be taken

CHANDĒSWARA.

THE text should be read, "on grain treble, on cloth quadruple," by which the remark of CHANDĒSWARA is justified, "VISHNU, VAS'ISHTHA and HĀRĪTA declare, that interest on grain may make the debt treble"

BEFORE the phrase, "on female slaves and cattle, the offspring shall be the interest," "on fluids octuple" has been omitted by the error of the transcriber, for it is found in the *Pravāda Chintāmenī*, and the same is propounded by YĀ'JNYAWALKYA "Fluids" intend salt, (*though crystallized*) and oil and similar commodities.

#### LXV.

YĀ'JNYAWALKYA.—THE offspring of female slaves or cattle

tle shall be taken as interest, on some fluids the highest accumulation through interest may be eight times as much as the principal, on clothes, grain, precious metals or gems, it may be in order four times, three times, or twice as much as the articles lent.

THE offspring of female slaves or cattle, taken as (*vriḍḍhī*) interest, or increase in its accepted sense is not the highest legal interest (*paramavriḍḍhī*), for the term is explained by authors according to its derivative sense (*varddhana*) increase in general (from the crude verb *vriḍḍh* grow) the offspring of cattle and of female slaves is the only interest, it is possible, that cattle and female slaves should be lent by one who is unable to maintain them, and who wishes they should be supported and bear offspring

The *Mitācshara*

^SŪLAPAṆI, in his commentary on YĀJNYAWALKYA, says since there can be no other interest on female goats and the rest and on female slaves and the like, placed as pledges their offspring is the only interest The highest interest on oil and the like lent at interest, being added to the principal, makes the debt octuple, and accumulates no further

THUS, according to some opinions, cattle and female slaves are not considered in such a case as constituting a debt, and it is intimated in the gloss of the *Mitācshara*, that they do not constitute a debt since they belong to the original master alone they do not fall under the description of debt Yet if female slaves and the rest be at any time accepted as loans by any person, then the limit of interest should be deemed the same as on gems gold and the like, for no special rule has been delivered

CATTLE is understood in the feminine gender from the contiguous term 'female slaves,' hence it is rightly expounded female goats and the like and cows and female buffaloes and the like in fact the term 'female slaves' is a general illustration

## LXVI.

VAŚIŚT'HA:—GOLD, silver and gems may be doubled ; grain trebled ; fluids, *as sugar just expressed and the like*, are under the same law with grain ; and *so rare* flowers, roots, and fruit : what is fold by weight, *except gold and the like*, may make the debt eight fold.

“ FLUIDS ;” the juice of sugarcane and the like : these also are trebled.

The *Retnācara*.

It is expounded, juice of sugarcane and the like, because it will be declared, that oil, salt and similar commodities are increased eight fold.

“ AND flowers, roots, and fruit ;” by the particle “ and ” the phrase is connected with the word trebled, to which the sense of the text reverts : the construction therefore is, “ so flowers, roots and fruit are also trebled.” CHANDĒSWARA gives a similar exposition. In the *Vivāda Chintāmeni* it is observed, that interest on the produce of fruit, insects and sheep, and on flowers, roots and fruit, is declared by ČĀTYĀYANA (LX), and by VAŚIŚT'HA (LXVI), to make the debt double, and treble. The passage at large will be quoted from MISRA in another place.

“ WHAT is fold by weight ;” literally, what is held in the scale ; namely, at the time of sale for the purpose of determining its quantity : and that is camphor and the like. Although gold and the rest be likewise fold by weight, yet they cannot be intended by the text, because a special law, limiting accumulation to twice the principal, opposes *that construction*.

INTEREST on grain trebles the debt (XLIV 2). Grain may be doubled at the time of harvest, that is, when new grain is gathered ; it may be doubled at that season, even within two or three months from the *date of the* loan. But, if not repaid at the season when new grain is gathered, it is trebled, and bears no further interest. “ So may wool &c.” wool and cotton bear the same interest with grain. “ Fibres of grass,” or reeds, and grass

and the rest, may be increased eight fold in one year. Such is the sense of the text (XLIV 2).

### The *Retnacara*

From this gloss it follows, that interest on grain *only* trebles the debt. Consequently, VISHNU, YĀJNYAWALKYA, VAŚISHT'HA and HĀRĪTA propound *the limit of interest on grain at three times the principal*. But this contradicts the accumulation stated in the texts of many sages, "three times, four times, and five times the principal."

On this point MISRA says, if the price of grain, after the crop is produced, have fallen below the price it bore at the time when it was lent before the harvest, the debt may be trebled; if the price be more reduced, quadrupled, if still more reduced, quintupled, but, when the price has fallen very little, the debt is only doubled and he expounds the text (XLIV 2) otherwise, as will be mentioned. According to this gloss, it appears from the circumstances mentioned, "lent before the harvest, and repaid at the time of harvest," that the limits of interest are not stated in *the text* consequently, when interest is received at the legal rate of an eightieth part and so forth, how far does accumulation extend? To this question there is no answer. If it be affirmed, according to this exposition, that interest doubling or trebling the debt is opposed to the rate of an eightieth and so forth, then it contradicts the *Retnacara*, for there interest is stated at two in the hundred and the like, and it is inconsistent with reason to admit a different rate of interest upon grain from *that, which is prescribed for other articles*. This and other objections may be suggested.

The author of the *Retnacara* reconciles the seeming inconsistency of such forms of interest, by distinctions relative to the good or bad qualities of the borrower, and the differences of time and place. ŚU'LAPA'NI holds, that the texts should be expounded according to the length or shortness of the period elapsed. In the *Visada Chintamani* several modes are stated.

The opinion, intimated in the *Retnacara*, is, that interest on grain doubling the debt at the time of harvest, similar interest on wool and cotton, and  
interest

interest on reeds, grass and the rest making the debt octuple in one year, concern debtors of mixed classes; for, stating the *first* text of HĀRĪTA (XXXIV and XLIV 1) as intending borrowers of mixed classes, the author cites the other text (XLIV 2) prefacing it with the word "so:" else, if it only concerned the limits of interest, it would be incongruous to cite it under that *other* title. Accordingly, in his gloss on the text of CĀṬYĀYANA (LX), he expounds "produce of fruit" cotton and the like. But interest trebling the debt is stated as the limit of interest; for that coincides with the text of VASĪSHṬHA (XLVI).

It is said, interest on reeds, grass and the rest makes the debt octuple at the close of one year; what is the accumulation on produce of *fields*, and on beasts of burden and the like? The answer is, when twice the principal is the limit of interest, there the order of classes is supposed: in other circumstances, the rate of interest on produce, on beasts of burden and the like, is different; and the rate assumed is that, which is propounded by HĀRĪTA for reeds, grass and the rest; since it is a rule, that a construction of law, established in one case, is also applicable to other cases, unless there be a *sufficient* objection. As an accumulation raising the debt eight fold at the close of one year is declared to be the limit of interest on clarified butter and the rest, so five fold *is the limit* on produce, beasts of burden and the rest. But, in fact, since there is no law to serve as authority for such an inference, the rate of an eightieth part, and so forth, on produce, *beasts of burden* and the rest, should be received from men of mixed classes, as well as from Brāhmanas and the rest. Such is the principle of the law. .

BUT, in the case of Brāhmanas and the rest, three times, four times, and five times the principal (to be established according to the qualities of the debtor), at the same periods, in which interest may accumulate at the rate of an eightieth part and so forth so as to double the principal which has been lent to men of mixed classes and made payable at the time of harvest, fall under the description of stipulated interest, and are therefore immoral. Not being stipulated in a time of extreme distress, would it not be interest which need not be paid? It might be so; but it would be paid by the debtor, that he may be able to borrow again. Such is the principle of the law. In fact, having

having been settled by many former debtors, it must be *now* paid, though not stipulated in a time of extreme distress, as has been already mentioned. When the borrower himself fixes the rate of interest, then only is it required, *as a condition*, that it should be stipulated in a time of extreme distress

BUT MISRA expounds the text of HĀRĪTA (XLIV 2), since "a year may suggest other periods, such as fifty months and the like, if the principal *lent in kind* be alone considered, it may be doubled or trebled, or, as stated by other sages, quadrupled or quintupled, the interest is regulated by the price. As an instance of the variation of interest with the difference of price, he adduces the text of MENU (XXXIII), and he reads the text of HĀRĪTA (XLIV 2) grain may be doubled, "if the principal *alone be considered*" (*mulē*) instead of grain may be doubled "at the time of harvest" (*tule*)

ON this some remark, that with all *debtors* grain is doubled at the time of harvest, that is, when new grain is gathered, by this special rule the rate of an eightieth part and so forth is barred but interest for one or two months must be regulated by proportionate subdivisions and the highest interest makes the debt three fold. Such is HĀRĪTA's meaning, and the *apparent* contradiction to the texts of other sages must be reconciled as before. "So wool and cotton, interest on these also doubles the principal, and precludes the rate of an eightieth part and so forth. To the question, when *does the principal become doubled?* the sage replies "in one year. He subjoins the limits of interest on grass, reeds and the like, "but grass &c. may be increased eight fold"

THAT is not *accurate*, for men of the commercial class and the like would be liable to repay grain doubled at the time of harvest. Thus were such the rule, a mercantile man, borrowing grain in the month of *Āṣāḍha* to the quantity of a hundred thousand *prasthas*, for the purposes of commerce, would be subject to commercial loss by repaying twice the grain borrowed; which is contrary to reason. But there is no objection to the rule, so far as it concerns men of mixed class not qualified for trade, although unable to subsist by other modes. To establish a different rate of interest on grain, wool and cotton from that prescribed on all *other* articles, is contrary to reason

Accordingly

Accordingly this gloss is stated in the *Retnācara* on the text of *MĒNU* (LXI); "any such debtor, who has borrowed grain or horses, valued at a hundred pieces of money, on interest at the rate of two in the hundred, &c." At the time of harvest, grain, wool and cotton is doubled; at the expiration of a year, it is only trebled. By the particle "only" the rate of an eightieth part and the like is prohibited. But grafts and the rest may be increased eight fold. Although the limits of interest, extending to four and five times the principal, might be reconciled in the same mode, by expounding the text as relating to debtors of mixed classes only, and by distinguishing moral and immoral exactions; yet, not having been stated by any author, this cannot be admitted.

It must, however, be examined how the limits can be regulated on the cheapness or dearness of grain. This difficulty is *thus* reconciled; since it is shown by the particle "only," in the text of *हृरिटा* ("or trebled only," XLIV 2), that the natural limit of interest is the accumulation which trebles the principal; and since an accumulation raising the debt to four or five times the principal is subordinate thereto; a debt is quadrupled and quintupled in that period only, which should *naturally* treble the debt: for, whatever were the value of the grain lent, three times that value is due at the period of repayment: if thrice the quantity of grain be *sufficient*, the grain is trebled; else, it is quadrupled: should that also be insufficient, it is quintupled; but if this again be insufficient, *MĒNU* forbids any further demand (LXI). Even though three times the value could be liquidated with twice the quantity of grain in consequence of a great advance in price, double the quantity of grain should not be paid; for no law *authorizes this reduction*.

THE qualities of the debtor should be understood of his adherence to his own regular mode of subsistence, his adherence to the modes of subsistence authorized in times of distress, his following the dictates of his own *perverse* will, and so forth. According to the gloss delivered in the *Dīpalcicā*, the accumulation depends on the length or shortness of the period elapsed; if the period be sufficient to treble the debt, it is trebled; if the period, in which a debt is increased four fold, be complete, it is quadrupled; if the period be sufficient to make the debt quintuple, it is quintupled. To this very rule of

adjustment the *Retnacara* alludes in suggesting distinctions according to the difference of time. Although there be no gloss of authors on the texts of sages *fully explaining this adjustment*, inferences may be drawn by the wise, through a simple exertion of their own intellect.

A RULE of adjustment may be formed on circumstances of *particular distress* affecting the debtor, or on the circumstance of general dearth

The *Mitacbarā*.

To this it may be objected when are those limits of interest to be admitted according to this opinion? Whether all these modes sanctioned by every learned authors, should be received, or which should be selected, the wise themselves must determine.

THE season of gathering new grain must be extended to wool. But in fact interest on grain doubling the principal at the time of harvest appears to be merely stipulated interest, for it has been stated by CHANDÉSWARA when treating of stipulated interest. This has been already noticed. Accumulation of interest raising the principal three fold, four fold or five fold, which are in the nature of limits of interest, must be regulated on the difference of countries. In this province the rates of an eightieth part and so forth occur not in practice on loans of other things than silver coins and the like, but interest on grain and the rest, similar to the stipulated interest described by HARÍTA, occurs *in practice*. In such cases, when the debt has long remained *due*, thrice the value is, sometimes, and in some places, adjudged by arbitrators. We think the text of NĀREDA (XLV), as expounded in the *Retnacara* sufficient authority to maintain local usages.

SOME think it a simple construction, that the creditor should receive his principal doubled, trebled, quadrupled, or quintupled, in the order of the classes, from *Bráhmīnas* and the rest. This construction is almost *literally* stated in the *Vivada Chintamāni*. It would be vain to offer more numerous interpretations of the text.

IN respect of cloth, CATYAYANA ordains, that interest shall make the debt



debt double, VRĪHASPATI, treble, YĀJNYAWALCYA, quadruple The seeming contradiction should be reconciled, as in the case of grain

## LXVII

VRĪHASPATI —ON pot-herbs the interest may make the debt quintuple; on seeds, and sugarcane, sextuple, on salt, oil, and spirits, octuple,

e. So on molasses and honey, if the things lent have remained during a long period.

“ SEEDS,’ seed of corn and the like on that and on sugarcane, *sextuple* Interest may make the debt octuple, if the things lent have remained for a long period, that is, for such a period as duly increases the debt eight fold.

## LXVIII

CATYĀYANA —FOR all sorts of oil and spirituous liquors, for measures of clarified butter, for molasses and salt, the interest is held legal, though, *with the principal*, the debt be made octuple

## LXIX

VRĪHASPATI —FOR galls, wood, bricks, thread, and substances from which wine or spirits are extracted, for leaves, bones, *ivory or shells*, and leather, for weapons, *common* flowers and fruits, no interest is ordained *without agreement*.

“ SUBSTANCES, from which wine or spirits are extracted,’ *alluding to a substance, from which an in-briating liquor is drawn, and which is commonly named cut h* ‘Bones,’ teeth, conchs and the like “Leather, the hide of the black antelope and the like “Weapons,’ arms The apparent contradiction to the interest specially ordained on flowers and fruits is reconciled by supposing rare flowers and fruits in one instance,

and

and common flowers and fruits in the other. To this gloss the *Retnacara* subjoins the following text

## LXX

VISHNU —ON substances from which wine or spirits are made, on cotton-thread, on leather, armour, weapons, bricks, or charcoal, which are not liable to loss, *the interest may make the debt double.*

THESE the mention of conchs supposes the countries in which they are common and the same observation may be made on other substances. Since the text of VASISHT'HA (LXVI) propounds interest specially ordained and trebling the debt, whence arises an apparent contradiction, therefore the commentator, on the grounds of this text, holds, that interest accrues on rare fruits and flowers, such as nutmegs and cloves, which are meant in the rule of VISHNU, but none on common fruits and flowers, which fall under the general description of "grass and the like." On cotton, as in the text of CATYAYANA (LX), interest makes the debt double, but according to HARITA it may treble the debt. This is connected with the difference of borrowers, or may be regulated on the commonness or rarity of the thing, and on the different sorts of cotton, in the same manner with interest on grain, or in proportion to risk. "Which are not liable to loss, on which, when lent, interest doubling the principal is not *probably* lost."

BUT MISRA, citing the text of VYASAPATI (LXIX), adds, "this is intended to forbid interest not agreed on, but interest on *these articles* may be promised through the exigency of affairs accordingly CATYAYANA and VASISHT'HA (LX and LXVI) propound interest doubling and trebling the debt." It is thereby intimated, that on other articles, if it be not specially declared when the debt is contracted, either that it bears interest or is free of interest, the creditor cannot afterwards receive interest.

BHAVADEVA reads *ajla* bran or chaff, instead of *ajlica*, bricks, and instead of *cirāa*, a substance from which wine or spirits are extracted, he reads *cirāo*, which he explains dirt, wearing cowdung and the like.

HERE both opinions (MISRA's and CHANDĒSWARA's) seem right: thus, if interest have been promised on any thing however common, it should be paid; and interest on rare things, even though not expressly promised, should be paid, for they are similar to gems, *gold* and the like. Both inductions are consistent with reason. Where interest accrues, because the articles are acknowledged scarce, on cloves, *fine* cauries, conchs, rhinoceros' horn, stones of great virtue and price, vitreous substances and the like, the limits of interest must either be taken at three times the debt or the like, under the texts of VASĪSHṬĪA and others (LXVI &c.), or at twice the debt, under the general texts of GŌTAMA and others (LIX &c.).

“ OF interest on loans this is the universal and highest rule &c.” (XLV); this rate of an eightieth part and so forth is universal, for it is prescribed by the law.

The *Retnacara*.

AND the subject of limited interest is considered in codes of law. But the rate customary in the country may be different; that is, may be contrary to the universal rate. The sage describes customary rates (XLV 2); “country” is there a mere instance, suggesting usage founded on seasons, on difference of class and so forth. “Double, treble” and the like are mere examples; more or less is therefore comprehended in the text. This text is accordingly cited as authority to prove special interest payable by debtors of mixed classes as stated in the *Retnācara*. In some provinces the principal is either repaid with interest amounting to half the principal, or is doubled, in others *the usual interest is different*.

months, else stipulated interest and the like would not exceed the rate prescribed by law? Interest on a debt secured by a pledge is declared to run six years and eight months, because the principal may be doubled in that time, *on the above supposition*, a loan, for which neither pledge nor surety had been received, would also bear interest for the same period, and sages would hold, that it might be trebled or quadrupled for what purpose then has it been declared, that interest ceases after fifty months. Consequently, no particular period is fixed for the cessation of interest, since fifty months and eighty months would be mutually contradictory but on such and such substances lent, such and such accumulation of interest is limited. Thus the whole law is consistent.

AGAIN; if a debt have been contracted on a pledge given, and by the casual loss of the pledge the debt become unsecured by pledge or surety, in that case also interest should be taken so long as twice the principal have not been received by the creditor, but, after that *has been received*, interest ceases. It is evident, that stipulated interest and the rest may exceed the interest allowed by law, if the debt be discharged, *in the case proposed*, within sixteen months

## ARTICLE III.

## ON DEBTS BEARING NO INTEREST.

## LXXI.

NAREDA.—A COMMODITY, the price of a commodity, wages, a deposit and *the like*, a fine to *the king*, a thing clandestinely taken *without a design to steal it*, a thing idly promised, and a stake played for, carry no interest *before demand* without a special agreement.

THE text is read *panya mūlyam*, the price of a commodity sold *but* a commodity purchased *and not received* falls under the description of a deposit. On the other reading, *panyam mūlyam*, the sense is, a commodity sold *but not delivered*, and the price of a commodity purchased *but not received*. Thus, if a thing sold happen to remain with the first owner, it carries no interest without a special agreement. "Wages, hire. "A deposit," a bailment. Interest after six months on the price of a commodity, and on a deposit not delivered after a demand (LVI), has been already declared, therefore interest is only prohibited before a demand. More on this subject should be stated in the chapter on deposits.

"A FINE," such as the highest amercement and the rest. "A thing clandestinely taken," obtained by fraud or the like.

The *Retnacara*

FOR instance, one has received money from another, pretending that he will deliver him from some present or future danger of oppression by the prince, but afterwards, the condition being broken either by non performance of his undertaking or because the danger was merely pretended, and repayment of the money being therefore required, it need not be paid with interest. Again, a hundred pieces of money have been extorted by some rogue, threatening a man of substance to accuse him of a crime before the prince or his kindred, unless he give him a hundred

SOME person, having sold a thing, tells the purchaser, " let this your property be a loan to me, I will pay interest for it " Or an indigent person, employing a servant on necessary work, but unable to pay his wages, tells him, " I will borrow money elsewhere and pay thy wages, or let them be *forborne*, and I will pay thy wages with interest " In such cases of positive agreement, there may be interest promised on a commodity sold, on wages and the rest and then only is interest due But, if there be no such agreement for interest, this text is intended to forbid interest in that case.

1st If any thing be given by some person to another as a loan, as a complimentary present and the like, or as a gift on a religious consideration, and by reason of the donee's absence it be committed to another, and long after received by the donee, it seems to be similar to a deposit does, or does it not bear interest while remaining in the hands of the intermediate person? This is one doubt *which may be proposed* 2dly In the case of sale without ownership the buyer is justified by producing the seller, and the owner recovers his property (Book II, Chapter II, v XXIX) when the owner recovers his property after the lapse of a long period, must, or must not, interest be paid? This is a second doubt *which might be proposed* 3dly Some money has been obtained for the king or his officer, from some person accused of a crime, afterwards, the accusation being disproved, the money must be refunded by the king or his officer, or, if it be true in forensick practice, that it should be made good by the accuser, must, or must not, interest be paid thereon? This is a third doubt, *which might be proposed*

ON the first doubt,

## LXXII.

SAMVERTA. — THERE shall be no interest on the property of women *lent amicably by them to their kinsmen*, nor on interest itself, nor on a deposit, *nor on any thing so committed in trust*, nor on a sum which is dubious or *unliquidated*, nor on a sum due by a surety, unless it be mutually stipulated.

“ COMMITTED ; ” placed with an intermediate person.

^SŪLAPĀNI in the *Dīpaṇīcā*.

THIS text is found in the treatise of YAJÑYAWALKYA, but its insertion there is not approved by ^SŪLAPĀNI and others.

“ ON a deposit so committed ; ” or *so remaining with the depositary* : not detained after a demand.

The *Retnācarā*.

THUS, a thing committed to an intermediate person is merely a sort of deposit : and “ committed ” is an epithet of deposit ; else, the circumstance of its not being detained after a demand would be unmeaning, since interest is not ordained on a thing committed *in trust*, after the lapse of six months : but even on a thing so committed, and not restored on demand, interest accrues, after a demand, at the expiration of six months. But, if the word deposit be there taken in a general sense, it is proper to do the same also in the present instance (*that is, allow interest after the lapse of six months, if the thing have been demanded*).

BUT how can interest be allowed in that case after the lapse of six months, according to the interpretation of ^SŪLAPĀNI ? It is answered, the word “ and ” in the text of CAṬYĀYANA (LVI 2) connects the sentence with what is not mentioned. More on this subject we shall deliver in the chapter on deposits.

“ ON the property of women,” as described of six sorts : *on such property taken by their husbands or other protectors*, there shall be no interest.

The *Retnācara*.

HERE “ protector ” is a general term comprehending sons and the rest. CAṬYĀYANA propounds a distinction.

### LXXIII.

CAṬYĀYANA : — NEITHER the husband, nor the son, nor the father,

father, nor the brothers, have power to use or to alien the legal property of women.

2. If any one of them shall consume the property of a woman against her consent, he shall be compelled to pay *its value with interest to her*, and shall also pay a fine to the king.
3. BUT, if he consume it with her assent, after an amicable transaction, he shall pay the principal only, when he has wealth enough to restore it.\*

By the expression, "against her consent," or forcibly, unamicable transactions are suggested: consequently, should he consume her property not amicably lent to him, interest must necessarily be paid; but there is no interest on the property of a woman amicably lent to a *kinsman*. The text of SAMVERTA must be applied to that case only. From the term (protector) used in the *Retnâcara*, it appears, that interest must only be paid by others than her husband, her son, her father, or her brother. For in the third verse of CĀTYĀYANA an agent must be sought for the act of consuming her property after an amicable transaction, and that agent occurs in the preceding verse (LXXIII 2), "any one of them." A daughter, a mother and a sister are entitled to borrow the several property of a woman on amicable terms, without interest; for the affinity is the same, the *considerations of duty* the same, and natural affection the same. But interest must be paid by the husband's father or mother. Yet, what objection there could be to place the father-in-law and the rest on the same footing with a brother, must be determined by the wise.

ON this subject some affirm, that the phrase, "neither the father nor the brother," intends the father's lineage generally; "neither the husband nor the son," intends the husband's lineage generally: and the same should be argued in respect of the mother's family. When it has been expressly declared by the woman, at the time the loan was made, that no interest should

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\* Book V, Chapter IX.



be paid, in that case none need be paid by any person. The phrase, "when he has wealth enough to restore it," intimates that the property of a woman, borrowed by a kinsman involved in distress, must only be paid when he is relieved from distress.

THE term "property of women," in the text of SAMVERTA above cited (LXXII) has been already expounded. *He proceeds*, "nor on interest." Here also the circumstance supposed in the case of a deposit must be understood, "not detained after a demand," for it is declared, that the balance of interest bears interest (LVI 2). But *this can only be claimed* after the principal has been discharged.\* Accordingly BHAVADEVA says, "the balance of interest on a sum paid

In the second doubt proposed, is it questioned whether interest shall be paid for so long a period as the thing remained in the thief's possession, with or without the knowledge of the owner, before it was adjudged, or whether it shall be paid for the period, during which the thing remains unreturned through the wiles of the thief after the owner's property has been adjudged in a judicial proceeding or the like? As to the first supposition, it is provided in the text of SAMVERTA (LXXII), "nor any interest on a sum which is dubious or unliquidated, nor on a sum due by a surety, unless it be mutually stipulated."

"A sum, which is dubious or unliquidated," of which it was first questioned whether it were due or not *on such a sum*, even though subsequently adjudged to be due, there is no interest.

The Retnacara

BUT, if it be adjudged to have been originally not due, of course there can be no interest, *for the greater includes the less*, as the staff is impure, if it can defile the bread.

IN fact the correct action of the text (Book II, Chapter II, v. XXIV) gives this sense, "the buyer is justified by producing the seller, and the owner recovers his property by the production of the seller." Before the  
seller

seller or thief be produced, the owner's property is not revived. Accordingly RAGHUNANDANA, in the *Práyaścibitta tāta* 1, says, "the owner of property lost." If his property subsisted at that time also, the gloss, "owner of lost property," would be irrelevant. If a stolen bull be sold to a YAVANA, and castrated by him or the like, expiation must be performed by the owner on account of some negligence which gave opportunity for the robbery.

THE production of the seller is proof, which justifies the buyer by establishing the sale: the owner recovers his property by the detection of the theft. Thus the buyer is justified by producing the seller for proof of the sale; and the owner recovers his property by proof of the theft. Hence the owner has not *actual* property, even while the cause is pending. Or, if the text be explained, "from him, by whom the thing was sold, the owner recovers his property, the king receives a fine, and the buyer receives the price," still the owner's property is only revived on the restoration of the thing by the thief or other person; and it is only restored after the judicial proceeding. Accordingly it is declared by a text, of the *Vijñāñāśāstra* (Book II, Chapter II, v. XXXII), that theft creates property: hence, if such property be lent, the robber may receive interest; and some benefit may arise from such *stolen* goods applied to religious uses.

VACHESPATI BHATTACHARYA admits the robber's property in stolen goods. According to his opinion the import of SAMVERA's expression, "what is dubious," is thus stated: a man, requested by another to give him a silver coin, and thinking that he asks it as a loan, gives the money by way of loan; but he, who receives it, entertains a doubt, "I have done him a benefit; he is a friend and is rich; does he give me this money for consumption, or does he lend it to me?" The matter being afterwards contested, interest, even though it be adjudged to be payable, need not be paid for the period preceding that *adjudication*.

SOME hold, that by saying "the owner recovers his property," his ownership is fully established. The gloss, "owner of lost property," is intended to indicate the former owner, as a solution of the doubt, whether ownership was then vested in the buyer, or in the former owner; it signi-

fies him, whose property was missing, who did not exactly know where his chattel was. If a stolen bull be castrated or the like, the owner must perform penance to expiate his want of sufficient care. Accordingly in the *Prayaschitta Vivēca*, after describing as theft the act of one, who resolves to dispose at his pleasure of what he well knows to be the property of another, *ŚŪLAPAṆI* says a robber has not property in stolen goods. Hence a sale made by him being a sale without ownership is invalid, and *YĀGYAVALKYA*'s expression, 'the owner recovers his property,' is accurate.

On the second case of the second doubt (*does it bear interest after adjudication?*) it is said, there can be no opportunity for fraudulent detention, since the king immediately compels restoration of the chattel. But, if a long period elapse in consequence of inability to enforce the demand, or the like, then, since the man is guilty of an offence, and the case is not specified under the title of prohibited interest, therefore interest must be paid, and since no particular period is directed under the head of interest without a special agreement, it is proper, that interest should commence from the date of the demand. This might be further discussed under the title of theft.

✓ 'NOR any interest on a sum due by a surety' (LXXII), *literally for suretiship* the act of a surety is suretiship, as the act of a thief is theft and that act of a surety is an undertaking for the payment of a debt. Thus, if a debtor die or be reduced to the utmost poverty, the debt, with the interest which has accrued must be paid by the surety. In that case the whole amount of principal and interest due by the original debtor is the same with the principal due by the surety, for he cannot be solely liable for the original debt. The text of *SAMVERTA* resolves the doubt, whether the surety must give further interest if he delay payment.

#### LXXIV.

*GA'TYAYANA* — No interest is ever due on leather, on straw or produce, on pale wine, on a stake played for, on the price of commodities, on a woman's fee, nor on what is due on account of suretiship.

"ON leather" interest is only forbidden without a special agreement; or on common leather: for the rule of VISHNU (LXX) ordains interest on leather, making the debt double. "Straw or produce" (*śafya*); the stems of corn. In respect to this also the rule is similar. "Pale wine" (*āśava*); a particular sort of wine. Interest on wine or spirituous liquors has been propounded by CA'TYA'YANA and VRĪHASPATI (LXVIII and LXVII): although this might be restricted to other kinds of inebriating liquors except pale wine (*āśava*), yet as the word "all" in the text of CA'TYA'YANA (LXVIII) must be extended to spirituous liquors, interest on all sorts of inebriating liquors, pale wine and the rest, is *thereby* suggested. Hence the adjustment must be the same as in the case of leather.

"A WOMAN'S fee;" a nuptial gift payable on an *Āsura* marriage and so forth: a gratuity payable to a courtesan or the like falls under the description of things given on a false or *immoral* consideration, as stated by NĀ'ĀREDA (LXXI). "What is due on account of suretiship;" what is become due from a bondsman on account of his suretiship.

It is here implied, that no interest is due on leather and the rest without a special agreement.

The *Retnācara*.

THE use of this reservation, "without a special agreement," has been explained in respect of leather, straw or produce, and pale wine. In respect of a stake played for, the price of a commodity, and a woman's fee, it is founded on the coincidence of the text of NĀ'ĀREDA (LXXI); and in respect of what is due on account of suretiship, on its coincidence with the text of SAMVERTA (LXXII), "nor *any* interest on a sum due by a surety, unless it be mutually stipulated." Here the inferible sense is, that common leather and the rest, on which interest had not been stipulated, do not, like deposits and the rest, carry interest, even though withheld after a demand.

CA'TYA'YANA and SAMVERTA (LXXIV and LXXII) prohibit interest generally on a sum due by a surety; if a debtor die, his surety being there-  
fore

CONSEQUENTLY, if the debtor wishes to pay no further interest, he must place in the hands of a third person the debt tendered by him and refused by the creditor; unless it be so deposited with a third person, it carries interest. Accordingly CHANDĒSWARA cites the text of YĀJNYAWALKYA with this remark, "a debt not received from a debtor tendering it carries no interest; on this subject the sage declares a *provisional* condition:" here the condition is, that the sum be deposited with a third person. In the text of VYA'SA also (LXXV) concerning a debt not received from a debtor tendering it, a bailment to a third person must be understood; for it has the same import with the text of YĀJNYAWALKYA.

## LXXVII.

VISHNU:—PROPERTY lent bears no further interest after it has been tendered, but refused by the creditor.

HERE also the condition, that it be deposited with a third person, should be understood: and it must be admitted by the followers of CHANDĒSWARA, that this concerns a debt contracted for no specifick period; else the limitation, "let no lender receive interest beyond the year" (XLI), would be irrelevant to the cases supposed by CHANDĒSWARA. It should not be affirmed, that the text may be thus applied, "receiving the principal within the period, let him take interest to the end of the period stipulated." If no interest be received even though the debt remain, it is an ill construction, that interest can be received when no debt is due. According to other opinions, the same rule should be understood even in the case of a loan for a specifick period. A distinction, however, will be mentioned in respect of loans for a specifick period secured by a pledge.

"PART of a loan remaining in the hands of the creditor" (LXXV); the term is expounded in the *Retnācara*, what is under the influence of the creditor. This gloss may also be explained in the form of apposition called *babubribi*; that, of which the creditor is influenced. A creditor is influenced by the humble solicitations of the debtor; thus, if a creditor, influenced by great submission and the like, say, "henceforward I will exact no interest," then the debt carries no interest. It is the same if the apposition be in the form called *tatpuruṣha*.

" A FINE " (LXXV), *amṛita*, such as the highest amercement and the rest. Although paid after long delay, it carries no interest.

" A NUPTIAL gift " (LXXV), which is promised, or undertaken to be paid  
*The Recāṇa*

THE commentator considers " promised " as an epithet of " nuptial gift "

" A NUPTIAL gift ; " money due on account of marriage. " A sum promised, " undertaken to be paid and this concerns a thing given on a false or *immoral* consideration for it is easy to suppose the same grounds for this and for the text of NĀREDA, which has that import (LXXVI)

*The Chintamani.*

By the use of a pledge to be kept only, such as a copper caldron and the like. If a pledge for custody only be used a single day, must interest be paid or not? The answer to this question is, it does not follow from the text, that interest need not be paid, if the pledge be used even a single day; for that would be inconsistent with reason; and there is no difficulty in explaining the text, "by such use of a pledge as is equivalent to the whole interest." Consequently the proportion of interest should be settled after deducting a sum equivalent to the use of the pledge. This answer may be given.

SUCH being the case, if the use of the pledge be more than equal to the principal and interest, would not the principal be forfeited? It may be so: and YAJÑAWALKYA accordingly says, "the pledge must be released on the double sum being paid, or having been received from the use of a pledge" (XLVI). Else, since VISHNU propounds the forfeiture of interest only by the use of a pledge, the principal must be paid. With so much as has been received, according to the value settled by arbitrators for the hire of the pledge, such as the price of milk or the like, or the waste of copper vessels and so forth, the interest is in the first instance discharged; if there be an excess, it is applicable to the liquidation of the principal. This form of adjustment should be observed in the present case.

THE moderns so expound the law. But the *Mitācsharā* states, that by the use of a pledge, however inconsiderable, interest is forfeited, however great, because the pledgee has violated the terms of the agreement. The question on the difference of these two opinions must be determined according to reason.

SOME money has been intrusted by one man to another, and is delivered by the depositary, with or without the consent of the owner, to another person, by way of loan; in that case to whom does interest accrue; to the depositary, or to the owner? This question will be discussed in the chapter on deposits; but it may be here examined, what is the rule when the depositary himself uses the money as a loan.

Is it used as a loan with, or without, the assent of the owner? If used  
without

without his assent, was it done on the presumption of assent, or without such presumption? The first case occurs in the following instance, a thing was first deposited with some person, afterwards the depositary, needing a loan for the support of his family, asks the loan of the depositor. In that case the loan authorized by him is alone valid, for, in comparison with a loan a bailment, consisting in *an agreement for custody only*, is a weaker contract. This may be explained when examining the comparative force of civil contracts. Hence (*since the loan prevails over the deposit*) the principal must be repaid with interest, unless there be a special agreement to exempt it from interest. The second case occurs when such a depositary needing a loan, and confidently presuming on the tacit assent of the owner, either on account of his indolence or his remote absence publicly executes a written contract of debt, and expends the money. This also becomes a debt but *secondary only*, for it is not delivered *as a loan* by the owner. If the first method can be observed the last should not be practised. In the present case the principal must also be repaid with interest. If the owner of his own accord relinquish interest, then only can the principal be repaid without interest.

THE form of repayment in either case is this: what became a debt with the assent of the owner must be repaid to the owner himself, and interest must be paid for the intermediate period. If the owner again make it a deposit, then only does it become a deposit. But if the owner, when assenting to the loan said, 'when you receive money discharge the debt and keep the money in your possession, my consent is not requisite,' in that case, the borrower should publicly execute a written declaration of payment with an acknowledgement of his holding the sum as a deposit and lodge the money in a place of safety. From that moment interest stops.

BUT, in the case of tacit assent, such assent is also presumed when the debt is paid. This is founded on the less degree of confidence in the former case and the greater degree of confidence in the last case. If the depositary said when the deposit was made, "I shall sometimes use this as a loan sometimes lend it to persons who may ask a loan, sometimes keep it," in that case, whatever the owner may have authorized, such only must be the *proceeding of the depositary*, for, if the owner said, "it must only be lent and repaid



repaid with my knowledg , ' in that case it can only be repaid with his assent, and interest must be paid until that assent be given but if he said, " the loan may be advanced and repaid according to your judgment of what is right, there is no occasion for my *special* consent , " in this case the depositary may, of his own authority, discharge the debt or receive payment from another person, to whom the money has been lent in the interval between the payment of one debt and the contract for another, interest is suspended should the proprietor subsequently claim interest until he consented to repayment, he shall not obtain it If the owner said, " it must not be lent, nor otherwise employed," the depositary is guilty of an offence, if he use it as a loan Should he do so in breach of such an injunction, then interest at legal rates to which the depositary has tacitly assented, must be paid until the owner consent to repayment

THE third case occurs, when a depositary expends the money, unknown to the proprietor, and executes no writing declaratory of debt This is an offence, and should be discussed under the title of theft Although there be no text of any sage, nor commentary of any author, on this subject, it appears so from the reason of the thing Thus

VRĪHASPATI", cited in the *Vyavahara tatva* — A DECISION must not be made solely by having recourse to the letter of written codes, since, if no decision were made according to the reason of the law, or according to immemorial usage (for the word *yukti* admits both senses), there might be a failure of justice.

*Yukti*, ratiocination

RAGHU ANANDA

## LYXIX

GŌTAMA — A LOAN secured by a pledge, to be kept only, yet used, bears no interest, nor money tendered, nor a sum, of which part is undelivered by the lender, or of which he disturbs the possession.

" MONEY tendered;" the term may signify a debtor willing to pay the debt. " Of which he disturbs the possession;" the pledge for which *debt* he attaches in the hands of the creditor. In such a case the loan carries no interest. For example, a debtor is willing to pay the debt, but the creditor refuses to accept payment; the debtor deposits the sum with a third person, and attaches the pledge: in this case the loan bears no interest. Because he has attached the pledge, interest ceases. But, if he attach a pledge, which is liable to be used, without tendering the debt, interest must be paid; and not, if he tendered the debt. The text of GŌTAMA suggests this distinction.\*

SOME explain the text, when the king, on the application of some creditor of that creditor, attaches the debt in the hands of the debtor, and makes it as it were a deposit in his hands, no interest shall in that case be paid. Others say, the meaning is, when the person of the debtor is attached by the creditor to enforce payment of the debt; when he is restrained from going where he lists; when he is confined in prison, and so forth, as stated in texts which will be quoted: in such cases the debt carries no interest during the period of restraint.

A LOAN secured by a pledge, to be kept only, yet used, bears no interest. By one, who has tendered the money, no interest is payable. By a debtor, who is disturbed in the use of the loan received, no interest shall be paid from the time of disturbance.

The *Retnācara*.

NO interest is payable, provided the sum be deposited with a third person; this must be supplied, for it coincides with the text of YĀJNYA-WALCYA.

" HE states another case." That is, when a creditor has granted a loan of a hundred *suvernas* deposited in the hands of a banker, and the whole sum has not been taken by the debtor, but a few *suvernas* only, and the

\* A subsequent gl's, more consistent with the literal sense of the text, is followed in the translation.

remainder left with the same banker, afterwards, the creditor discovering his insolvency, and apprehending that the debt would not be discharged, attaches the money in the banker's hands. In such a case the whole sum carries interest until the attachment; but after the attachment, so much only as has been received, and not the whole sum. Or *the other case alluded to may be*, when money deposited sometimes becomes a loan in the mode above-mentioned, and the creditor in such a case attaches *the deposit and insists on immediate payment*. Again; a man has lent a horse or the like to be used for burden; after two or three months the creditor, through *other* persons, forbids the use *of the cattle* it happens, that the horse, or other beast, is *only* restored two months afterwards. In such a case interest must be paid until *the use of the cattle was* forbidden, but not later, and no hire shall be paid for the horse, since he was originally received as a loan. Such is the opinion intimated in the *Retnacara*. According to the gloss of MISRA "a loan bears no interest, if it be attached, *withheld* or the like."

Of these interpretations one may be considered as the true sense of the text, and the rest as founded on the reason of the law. Or all may be considered as intended by the text, expounding it equivocally. But *at all events*, the several inductions must be admitted.

## CHAPTER III.

## ON PLEDGES, HYPOTHECATION, AND MORTGAGES.

## SECTION I.

ON THE NATURE OF A PLEDGE; AND ON PLEDGES LOST  
OR DAMAGED.

## LXXX.

**V**RĪHASPATI:—A PLEDGE (*ādhi*) is called *bandha*, and is declared to be divisible into four pairs:

2. MOVEABLE, or *personal*, and fixed, or *real*; for custody only, and for use; unlimited, and limited as to time; with a written contract, and with a verbal attested agreement.

*Bandha* is derived in the passive form, "that, which is bound or pledged (*badhyatē*). " A male slave or the like, being bound or confined, is then unable to perform service for his master; a horse also, being bound or tied, is then unfit for his owner's use. By acceptation, the sense of the word "*bandha*" is a thing remaining in the creditor's possession by an agreement on the part of the debtor in this form, "this *chattel* shall remain in thy possession, so long as I do not repay thy money." Accordingly it is said by

BEING divided into four pairs, moveable or fixed, and so forth, it is of four kinds four fold, distinguished according to the nature of the thing pledged, the form of *hypothecation*, its period, and the evidence of the transaction, and eight fold, by the subdivision of these

The author of the *Calpataru*

MOVEABLE and fixed compose the first pair relative to the nature of the thing pledged, for custody only, and for use, the second pair relative to the form of *hypothecation*, unlimited, and limited *as to time*, the third pair relative to the period of the mortgage, with a written contract, and with a verbal attested agreement, the fourth pair relative to the evidence of the transaction By the subdivision of these, by their mutual differences, by the relative distinctions of moveable and fixed, and so forth, the subject becomes eight fold consequently each of the four sorts contains two species.

THE enjoyment of the pledge, and the debtor *himself*, and so forth, are secondary evidence of hypothecation proved by enjoyment or made by the party himself *without writing or attestation* They are not consequently exclusive of this subdivision Or these are the distinctions of pledge, as approved by law But a pledge unauthenticated by attestation or written contract, or authenticated by an attested writing, not being noticed in codes of law, is not approved by *positive law*. Such is the interpretation according to CHANDÉSWARA

OR a pledge, whether moveable or immovable, is of four sorts, to be merely kept, to be used, redeemable at pleasure, or at a specified time. This four fold distinction of *pledges* concerns moveable *property*, and *also* *concerns* fixed *property* A pledge is sometimes authenticated by a written contract, sometimes by a verbal attested agreement Such may be the construction of the text This is stated generally sometimes also a pledge is proved by enjoyment, or has been delivered with a verbal unattested agreement.

### LXXXI.

NĀREDA — THAT, to which a *secondary* title is given (*adhicriyate*) is (*adhi*) a pledge.

2. It has two forms, to be released at a fixed time, or to be retained until payment be tendered. It is again declared to be of two sorts, for custody only and for use,
3. EVEN so must it be diligently kept. on its loss or destruction by the negligence of the lender, the interest on his loan is forfeited; and even if it be only spoiled or altered.

It has two characters or forms. One, to be released, or given up, at the period which has been fixed or settled. For example, *the pledgee says*, "a loan has been received from you on the mortgage of this land; when twice the amount of the debt has been realized, you must surrender the mortgage." Or *he says*, "a loan is now received by me and a pledge is given; paying the debt at the close of the year, I will redeem the pledge. else this pledge shall become your absolute property." When a time has been settled in these or other forms, the pledge is "to be released at a fixed time." This has been named by VRĪHASPATI, a pledge "limited as to time."

THE sense of the *other* phrase completed is, "until the time of payment *retained*," until payment be tendered. In the case of an agreement in this form, "whenever the debt shall be discharged, then only shall the pledge be released," it is a pledge for no specific period and this is named by VRĪHASPATI a pledge "unlimited as to time," or redeemable at pleasure, for the payment of the debt and surrendry of the pledge depend on the will of the party.

"It is again declared to be of two sorts" (LXXXI 2), the two kinds being subdivided, the distinction is four fold. But CHANDĒSWARA thus expounds "two forms" (LXXXI 1), a pledge, whether fixed or moveable, is unlimited or limited as to time, a distinction described by the phrase "to be released at a fixed time, or to be retained until payment be tendered," and it is for custody only or for use these are the two distinctions. It must also be understood, that it may be authenticated by a written contract, or by a verbal attested agreement.

.. Thus the texts of VRĪHASPATI and NA'ĀREDA coincide. According to this interpretation, it is proper to expound the phrase "it is again of two sorts," with a written contract or with an attested verbal agreement. Here the text of NA'ĀREDA is expounded in conformity with the text of VRĪHASPATI; or the text of VRĪHASPATI may be expounded in conformity with the text of NA'ĀREDA. Ultimately there is no difference.

"THAT, to which a title is given" (LXXXI 1); that, which is made similar to his own absolute property. In this instance there is only a secondary title, consisting in the custody or occupation of another's property. As that, to which a man is entitled, is kept or used like his own property, so is a thing received in the form of a pledge, though it actually belong to another: and the word *ādhr* acquires the same meaning with *bandha* from practice and use. Or the derivation of the word *ādhr* may be, that, in right of which (*adbhīṣṭya*) a loan is made or the like. It may be any how understood by supposing the intervention of some term, as in the epithet fawn-waisted, where the term expressive of similarity is dropped.

"EVEN so must it be kept" or preserved (LXXXI 3); according to the difference in the forms of pledges. In such form as such things are kept, must the pledge be kept. Or, it must be kept in the mode of custody, to which the debtor assented. "On its loss or destruction," in case of its not being preserved, interest is forfeited by the negligence of the lender. Such is the meaning of the text. If the pledge "be spoiled or altered," if it be broken or the like, the consequence is the same; interest is forfeited as in the case of loss or destruction. In this interpretation CHANDĒSWARA concurs.

#### LXXXII.

VISHNU:—By the use of a pledge *to be kept only*, the interest is forfeited; and the creditor shall make good the loss of a pledge, unless it was caused by the act of God or the king, and without his fault.

"By the use of a pledge;" already expounded by the use of a pledge *to be kept only*.\*

\* Gloss on v. LXXVIII.

If the loss of the pledge be caused by the act of GOD or of the king, without any fault on the part of the creditor, his recovery of the principal and interest will be propounded. For example, when a horse or ox is pledged, and dies of disease notwithstanding the best medicaments administered, or is forcibly seized by the king though guarded with the utmost diligence, the loss is caused by the act of GOD, or of the king. But the creditor must make good a pledge lost without such *inevitable necessity*, either by payment of its value *in money* or by delivery of an equivalent *in kind*. But in the case of his not making good the pledge NAREDA ordains the forfeiture of the principal (LXXAIII). Such is the gloss delivered in the *Retnacara*.

## LXXAIII

NAREDA —If a pledge be lost, *and the creditor do not replace it*, the principal itself shall be forfeited, unless the loss was caused *without his fault* by the act of GOD or of the king.

THIS case of a pledge not made good must be understood, where the pledge is not replaced by an equivalent, and is equal in value to the amount of the principal *debt* together with interest. It is also proper to apply *the same rule* when the creditor, in consequence of his actual poverty, is unable to pay the excess of value or when the value of the thing cannot be ascertained.

THE forfeiture of the principal implies the forfeiture of interest as well as principal. It would be inconsistent with reason, that the principal should be forfeited and the interest remain due.

## LXXAIV

YAJNYAWALKYA —If a pledge for custody only be used, there shall be no interest, nor, if a pledge for use be damaged, a pledge spoiled, *lost*, or destroyed, unless by the act of GOD or of the king, shall be made good *by the creditor* \*.

\* The last hemistich is by itself a rule, and is not a large one. I place the \* because reference is made to it before the conclusion.



“ SPOILED or *lost*, broken, stolen or the like, and become utterly unfit for use “ Destroyed, ’ annihilated or totally lost Both these pledges must be made good by payment of the value, or otherwise

The *Retnacara*.

CONSEQUENTLY the term “ destroyed ” signifies dead, burnt or the like It may be questioned how “ stolen ” can be suggested by the word *lost or spoiled* If a thing stolen be recovered, it is not lost, if it be not recovered, it is *totally lost, or similar to a thing destroyed*, but the *immediate* possibility of recovery does not justify the consequence

THE text of NĀPĒDA (LXXXI 3), as expounded by CHANDĪSĀRA, “ on the loss or destruction of the pledge, interest is forfeited,” is inconsistent with these texts It should not be affirmed, that, under the authority of both texts, the forfeiture of interest, and satisfaction for the pledge, are both ordained This would be inconsistent with the text of VYĀSA

#### LXXXV

VYĀSA —If gold, or other *precious* thing, shall be pledged, and lost by the negligence of the receiver, that creditor, on the principal and interest of his loan being paid, shall be forced to pay the price of the pledge

HERE “ receiver ” *intends* the receiver of the pledge or creditor for the pledge, being in the creditor’s possession, cannot be lost by the *immediate* fault of him, who received the loan It may indeed sometimes happen *mediately* for example the borrower, applying to the lender, with the intent of inducing his acceptance of the terms, conceals the proper food of the cow offered as a pledge and describes it otherwise, the creditor, confiding in his information, lends the money on such a pledge afterwards mischief arises from change of food In this and other cases *the reader* may draw his own inferences But, in the case supposed, it would be inconsistent with reason that the creditor should be liable to make good the value of that pledge

IN such cases, we hold, that the matter must be settled by learned men, discriminating the faults on both sides. Since no rule is expressly declared by sages, nor any thing particularly stated by ancient authors, *the case may be determined* by honest men of acute sense. If any rule on this subject be declared in books of other countries, they, *as assert a settled rule*, have the advantage *in the debate*. Thus, when a pledge is lost, if the creditor do not announce the loss he forfeits interest and must make good the pledge, under the authority of the texts of NARADA and VISHNU (LXXXI 3 and LXXVII). In this case, his concealing the loss of the pledge is a fault on the part of the creditor, wherefore interest is forfeited and this is reasonable, for the creditor concealed the loss, from a desire of receiving interest, reflecting, "if the loss of the pledge were announced, the debtor, borrowing money elsewhere, would pay the debt and demand his pledge, by which my interest would be forfeited." concealment therefore was a great offence. But interest only stops after the loss of the pledge; the interest due before that loss may be received.

THE text of VYASA must be applied to the case where the loss of the pledge was announced. Consequently, the pledge being lost by the fault of the debtor or of the creditor, and the loss not being announced by the creditor, interest is forfeited. But if it be lost by the creditor's fault, and the loss be announced, he must pay the value of the pledge or give an equivalent, and may receive the principal and interest. In the same case, if he concealed the loss, he receives the principal without interest.

SOME are of opinion, that the text of NARADA, "on the loss or destruction of the pledge, interest is forfeited" (LXXVI 3), concerns a pledge to be used. For example, when the borrower, receiving the loan, gave as a pledge a boat or the like for use then, should the pledge be lost, the creditor forfeits interest, and the debtor loses his property and this is reasonable, for the loss is imputable to both parties, to the debtor because he assigned to the use of the pledge, to the creditor, because he did use it. Hence the creditor forfeits interest and the debtor loses the thing pledged.

HERE it should be noticed, that, if the pledge be spoiled (that is, broken

or the like) in consequence of use, then only should this rule be applied; for, if a pledge be used, which should only have been kept, the whole interest is forfeited; if it be spoiled, the principal is forfeited; if a pledge, liable to be used, be actually used, half the interest is forfeited; if it be spoiled, the whole interest is forfeited. This is accurate. However, this rule concerns only a pledge for use with *the assent of the pledgeor*. If the pledgeor have not assented to its use, the same rule should be understood, which is directed in the case of a pledge for custody only.

“THE use of a pledge,” in the text of VISHNU (LXXXII), being expounded by CHANDĒSWARA, the use of a pledge to be kept only, it is proper to infer the loss of a pledge for custody only, in the phrase, “the creditor shall make good the loss of a pledge.” VYĀSA, specifying “gold or other precious thing,” evidently intends a pledge for custody only. YĀJNYAWALKYA (LXXXIV), ordaining the forfeiture of interest, if a pledge for use be broken or the like, adds, “a pledge spoiled must be made good;” that is, if a pledge for custody only be broken or the like, an equivalent must be given. There is no impediment to this induction. Consequently the text of NĀREDA, “if a pledge be lost, the principal itself is forfeited” (LXXXIII), coinciding with the texts of other sages, may be well expounded, “if a pledge for custody only be lost.” Or, if “lost or destroyed” be explained absolutely lost, or totally destroyed by mortality, fire or the like, this may be understood of a pledge to be used: accordingly YĀJNYAWALKYA, having ordained, with a view to pledges for custody, that a pledge spoiled shall be made good, directs a pledge destroyed to be made good, as a rule concerning pledges for use. But this also concerns pledges for custody; and thus the *true* sense of the expression, “a pledge spoiled shall be made good,” is obtained. This they hold reasonable.

Others say, if a pledge for use be spoiled or rendered unfit for its purposes, interest is forfeited: the authorities are the texts above cited “on the loss of a pledge interest is forfeited” (LXXXI 3), and “there shall be no interest if a pledge for use be damaged” (LXXXIV). If the pledge be absolutely lost, being burnt or destroyed, an equivalent must be given, or the principal is forfeited: the authorities are *other* texts; “the creditor shall

make good the loss of the pledge" (LXXXII). "if a pledge be lost, the principal itself is forfeited (LXXXIII), "a pledge destroyed shall be made good" (LXXXIV). If a pledge for custody be spoiled or damaged by the negligence of the pledgee, even without the use of it, or if it be damaged by use, interest is forfeited under the text (LXXXV) 'and even if it be only spoiled or altered' If it be *not* lost and delivery of the principal itself is forfeited or an equivalent must be given under the text (LXXXVI) "any pledge being wholly spoiled, the principal debt shall be lost," and (LXXXIV) 'a pledge spoiled or lost must be made good.'

HERE it must be understood, that, when the pledge is lost by the fault of both parties one forfeits interest, the other loses the thing pledged. When it is lost by the fault of the creditor alone, it must be argued that the creditor shall make good the pledge or give other satisfaction according to circumstances. The loss cannot *easily* happen by the fault of the debtor alone however, should it any how happen *by his fault*, the loss of the thing pledged falls solely on the debtor, as in the case of a loss caused by the act of God or of the king.

#### LXXXVI

VRIHASPATI —ANY pledge being used, and wholly spoiled *by the fault of the pledgee*, the principal debt shall be lost, if the pledge be of great value in respect of the debt, and he must fully satisfy the pledgeor.

'WHOLLY spoiled,' rendered totally unfit for use. "If the pledge be of great value,' in respect of the sum due to the creditor

The Retnāra

ACCORDING to the last mentioned opinion this concerns only a pledge for custody. But according to the former opinion there is no difficulty in referring it to both *sorts of pledges*. "In respect of the sum due to the creditor," that is, in respect of the aggregate of principal and interest; for it would be improper to forfeit the principal while the interest remained due.

“ HE must fully satisfy the pledgeor,” by humble supplication and the like. If he be not so satisfied, the pledgee must pay a sum not exceeding the value of the pledge. Under this law, if clothes, ornaments or the like, received in pawn, be wholly spoiled by the wear of them or otherwise, should their value be equalled by the amount of principal and interest, then the principal and interest shall be forfeited; if their value be not equalled by the principal and interest, the value must be made good. When clothes worth ten *suvernas* have been pledged for a debt of four *suvernas*, in consequence of the lender’s obduracy, though the ignorance of the borrower or his want of any other effects, in such a case it is understood, that the value cannot be made good out of the principal and interest.

MISRA expounds the text of VRĪHASPATI (LXXXVI) as intending a debt free of interest.

#### LXXXVII.

MENU:—A PLEDGE must not be used by force, *that is against consent*: the pawnee so using it must give up his whole interest, or must satisfy the pawner, *if it be spoiled or worn out*, by paying him the original price of it; otherwise, he commits a theft of the pawn.

THIS text concerns pledges for custody only: a pledge to be kept only, such as clothes, ornaments or the like, must not be used. The pawnee, so using it, must give up his whole interest, or must satisfy the pawner; that is, if the pledge be worn out by use, he must satisfy the owner by paying the value, which the pledge bore when it was well conditioned. Otherwise, he would be guilty of stealing the pawn.

CULLŪCABHATTA.

THE text of VRĪHASPATI also (LXXXVI)\* has the same import; for that and the text of VIŚHNU (LXXXII) are expounded, “ if the value of the pledge cannot be made good out of the principal debt, the pledgee must pay the excess, or give an equivalent.”

## LXXXVIII.

MENU:—THE fool, who secretly uses a pledge without, *though not against*, the assent of the owner, shall give up half of his interest, as a compensation for such use.

THE fool, who, in breach of his agreement with the owner, uses by stealth effects, which should only be kept and which were not delivered for interest *by enjoyment*, must relinquish half his interest, to requite the use of *the pawn*. But, if he use the pledge by force, he must relinquish the whole interest (LXXXVII).

CULLŪCABHATTA.

"ACCORDING to all opinions this text does not solely concern a pledge for custody; for it states employment on work, and the unwillingness of the living pledge; but a pledge for custody cannot be willing, nor can it perform work. The text concerns both a pledge for custody, and a pledge for use. The sense of the text is, "he, who employs in labour, without the assent of the owner, an hypothecated slave or the like, who is unwilling to work, shall be compelled to pay the value of his labour, or shall receive no interest,"

The *Retnâcara*.

ACCORDING to MISRA the interpretation is the same. "The value of the work;" whatever is the just hire for the work performed by the slave, or whatever has been gained through his labour. It may also be understood of the hire of boats or the like: but in this case employment on work is figurative. Although "unwilling" be a superfluous term in respect of boats and the like, since it is only significant in respect of slaves and the rest, there is no objection to a *comprehensive interpretation*.

If a debtor, through anxiety for the celebration of a festival, or through generosity, assent to the use of the pledge, and also stipulate other interest, in that case there is no forfeiture of interest: to make this evident it is said, "without the assent of the owner." If a slave, whose employment is not authorized, be unwilling to work, and be nevertheless employed, interest is forfeited; therefore the sage adds, "unwilling." Consequently, if a slave be employed without his own consent and without permission from his master, the pledgee must give up his whole interest; with the slave's consent, but without his master's permission, half the interest (for this coincides with the text of MENU LXXXVIII); with the master's permission, but against the slave's will, also half the interest: else, "unwilling," in this text would be insignificant.

THIS text may, however, be restricted to pledges for custody only. Thus the verb "do" signifies act or transact, as it is explained by those who are conversant with law; "work," employment or use of a copper caldron or the like to hold or boil rice. He, who so uses such a vessel, is meant by the

text. "Without the assent of the owner," as before explained. "Unwilling;" concerning which *pledge* it is not the will or intention of the owner that the creditor should benefit by the use of that caldron. Such will or intention is presumed, when the owner, seeing or hearing of the use of the pledge, manifests no displeasure. It should not be objected, that the phrase, "without the assent of the owner," becomes unmeaning. Although it were against his wish, he may consent through favour or the like.

When a slave, a cow, or the like, has been hypothecated, and interest has been separately stipulated, food must be supplied by the pledgee alone. In such a case, if the creditor through tenderness supply their food, he shall receive interest, even though he employ them on work. If the debtor furnish food, but the slave perform with good humour some trifling work for the creditor, there is no forfeiture of interest. When such a contract is made, it must be attributed to the anxiety of the debtor for the celebration of some festival, wherefore he submits to such terms.

FROM the expression "without assent," in the text of *CA'TYA'ANA*, it is inferred, that, should a slave be employed even with his own consent, but without the sanction of his master, half the interest is forfeited; if he be compelled by force, the whole interest is forfeited. But, should a pledge for custody be used, without the assent of the owner, the whole interest is forfeited, even though no force be employed, as is suggested by the term "for custody only," in the text, "if a pledge for custody only be used, there shall be no interest" (LXXXIV). This interpretation, consistent with the gloss of *MISRA*, is best. However, should the owner consent to the use of a pledge, which regularly ought to be kept only, and stipulate other interest, there is no forfeiture.

If the pledgee maltreat a slave unwilling to work, he shall be freed.

ΛC.

*CA'TYA'ANA*: — BUT he, who with words, or with blows struck on a sensible part, insults or pains a pledged slave or the like refusing to work, shall forfeit the interest of his loan, and pay the first amercement.



THIS text, from the title, *under which it is introduced*, shows that he, who so abuses his pledge, shall receive no interest. The first amercement is here mentioned incidentally.

The *Retnācara*.

SINCE this text is inserted under the head of forfeited interest, the loss of interest is implied. The amount of the first amercement and other fines has been variously stated by MENU, NĀRĀDA and others; and it should be regulated, in the title of fines, according to the degree of the offence. The sense of the text is this; he, who hurts a slave or other *living* pledge, with blows of a staff or stick struck on a noble part, or who menaces him, shall pay as a fine the first amercement, and of course shall receive no interest. The word "staff" is used generally, intending any *instrument for inflicting* corporal pain.

DOES this text concern a slave or other similar pledge employed without the assent of the owner, or universally any slave or other living pledge? If it be said, the first alone is suitable; for, when the employment of a slave or the like has been authorized by the owner, he may be tasked by the creditor, as *if he were* his own slave; should he refuse to work, proper chastisement may be inflicted; and this is consistent with reason; the text is therefore properly referred to the unauthorized use "*of a pledged slave*:" that is denied; for he should only be bidden to work, although his employment have been authorized. The slave of another, who has amicably authorized his employment, should not be beaten: even though the usufruct were assigned in lieu of interest, the pledgee should only tell the owner, "your slave does not perform my work, you must assign other interest;" on this information the owner must do what is proper: if the creditor act otherwise, he incurs a fine. The last supposition is alone right. Accordingly it is said in the *Retnācara*, "this text, from the title, under which it is introduced, shows, that no interest shall be received." On any other construction, the forfeiture of interest is *already* suggested by another text (LXXXIX), and it would be therefore improper to establish an implied sense of this text.

MENU ordains that no interest shall be received even in the case of using a pledge which *regularly* may be used.

legal, or of the stipulated, interest) must be given up because *the use of the pledge was* not settled in lieu of interest YĀJÑYAWALKYA (LXXXIV) ordains the forfeiture of the whole interest, in every case where a pledge for custody only is used

If a pledge to be kept only, as clothes, ornaments or the like, be used, there shall be no interest, *nor* if a beneficial pledge, as an ox or the like, be rendered unfit for use

The *Dīpākalikā*.

THAT IS, if it be rendered unfit for use, there shall be no interest. A similar gloss is delivered in the *Retnacara* But, if a pledge, which *regularly* may be used, be *actually* used, since the relinquishment of half the interest is ordained the *universal* prohibition of interest is unfit. As for a pledge to be kept only, if that pledge be used, the forfeiture of interest must be regulated in due proportion For instance, both the value of the usufruct and the amount of interest should be ascertained and compared, as has been mentioned under the head of prohibited interest

By the use of a pledge, however inconsiderable *the value of its usufruct may be*, the interest is forfeited, however great *its amount*, because the pledgee has violated the terms of the agreement

THE author of the *Mitācsharā*

“TERMS of the agreement,” the bargain, a pledge delivered for use being a pledge to be used, and a pledge delivered for custody only being a pledge to be kept.

BUT MISRA says, forfeiture of interest, if a pledge for custody only be used, is one rule, forfeiture of interest on the *unauthorized* use of a pledge, which *regularly* might be used, is another rule, and forfeiture of interest, if the pledge be damaged, is again another rule The meaning has been already explained The meaning of the second rule is, that half the interest is forfeited by the unauthorized use of a pledge, which *regularly* might be used, and the whole interest by the use of such a pledge, if the profit were assigned in lieu of interest, or if it be used against the consent of the

## XCII.

VRĪHASPATI:—If the creditor through avarice use a pledge before interest cease on the loan, or before the stipulated period expire, the debt shall bear no further interest.

2. LIKE a deposit, the pledge must be carefully kept; interest is forfeited, if it be damaged.

If it be agreed, that a pledge shall be used at a specified time, it must not be used while the period is incomplete. This is declared by the text.

The *Retnācara*.

For example; a borrower receives a loan on the security of a pledge, and makes an agreement in this form; "this pledge shall remain in your possession, if I do not discharge the debt at the expiration of five years, the pledge shall be enjoyed by you;" and the borrower pays interest independent thereof. In this case the use of the pledge before the stipulated period is unauthorized; it should not be taken. But, when the period has expired, then only should the pledge be used; and interest is not thereby forfeited. If the debt were contracted with an agreement, "I will redeem the pledge, when the principal is doubled;" then, if the pledge be not redeemed although the debt be doubled, the pledge may be used after notice given to the debtor's kinsmen. In that case also there is no further interest (CXIX).

THIS use of a pledge is legal; but how can amicable enjoyment of a pledge, which it is in the debtor's power to forbid, be justified by law. If a creditor use a pledge, without the assent of the owner, before the stipulated period expire, and before interest cease on the debt, he forfeits the interest previously agreed on, and which had not been paid. But if the interest have been paid, a deduction must be made from the principal. This is deduced from the text of CAṬYAYANA (LXXXIX), and from common sense. If the owner, when the debt is contracted, amicably consent to the use of the pledge, interest is not forfeited: this is reasonable.

Does the text of VRĪHASPATI (XCII) concern a pledge to be used, or

a pledge to be kept only, or both ? On the first supposition it would be wrong to say, that a pledge for custody may not be used, when interest has ceased *on becoming equal to the principal*, and when the stipulated period has expired; for the use of a pledge given for custody is authorized after the debt is doubled (CXXI 2). On the second supposition, what is the rule in respect of a pledge for use ? If it may be used from the date of hypothecation, there is a contradiction to reason, in *allowing both* the use of a pledge and the receipt of interest independent thereof. If it may not be used, even when the period has expired and the debt has ceased to bear interest, it is inconsistent with reason, that a pledge for custody may be used, but a pledge for use may not be used. On the third supposition, the distinction of pledges for custody and for use would be fruitless.

To this it is answered, the text concerns both; but the distinction has its use. The unauthorized use of a pledge for custody only, even though not *expressly* forbidden by the owner, induces a forfeiture of interest (LXXXIV). If an employable pledge be used without the consent of the owner, half the interest is forfeited, but against his consent, the whole interest (LXXXVII and LXXXVIII). A pledge for custody only (LXXXIV) signifies a pledge not delivered for use, and unlimited as to time. Such is the opinion of VĀCHESPATI MISRA. But according to CULLŪCABHATTA, the same must be affirmed of a pledge for custody which is affirmed of a pledge for use; else it is a disparagement to him, that he has not distinguished them.

If a pledge for use or custody be spoiled or altered, the interest is forfeited (LXXXI 3); if it be lost or destroyed, the principal itself and the interest are forfeited (LXXXIII, LXXXI 3, LXXXVII and LXXXVI); for the term used in the text (LXXXI 3) is explained in the *Retnācara*, "on the loss or destruction of the pledge by the fault of the lender." It is ordained in the rule of VISHNU (LXXXII) and text of YĀJNYAWALKYA (LXXXIV), that the loss of a pledge must be made good. An alternative is *thus* stated, the delivery of an equivalent in lieu of the pledge, or the forfeiture of principal and interest. A third case is stated, payment of the *pecuniary* value of the pledge (LXXXV). All this *must be explained* according to the fitness of the thing for use; since it is virtually the same, whether a thing be rendered wholly unfit for

use, or be totally destroyed. But a pledge, though rendered unfit for use, becomes the property of the creditor, for that is reasonable. By the mere use of a pledge for custody only, interest is forfeited, as appears from the term "a pledge for custody" in the text of *Yājñyavalkya* (LXXXIV) - but it is proper to assert, that interest is not forfeited by the authorized use of a pledge, which regularly should only be kept. *In general* there is no forfeiture of interest by the authorized use of a pledge, which regularly may be used. Interest is forfeited by the employment of a slave or the like against his will, though authorized by his master (LXXXIX). Whether the employment of him be authorized or unauthorized, if an unwilling slave be beaten, a fine shall be paid (XC). If an employable pledge be used without the consent of the owner, half the interest is forfeited (LXXXVIII). If it be used against his consent, the whole interest is forfeited (LXXXVII).

IN the gloss of *Cullucabhatta* it is stated, that the text concerns a pledge for custody only. His meaning has been already explained. A pledge, whether such as should be kept only or such as may be used, must not be used before the stipulated period expire, or before interest reach its limit. If it be used, interest is not valid against the price of its use. The value of the use must be discharged out of the interest due. This is consistent with reason. If a pledge either for custody, or for use, be rendered partially unfit for use, interest is forfeited in proportion to the injury and damage (XCII and LXXXIV). By stating forfeiture of interest in proportion to the injury or damage, the disparity of forfeiting the whole interest for trifling damage is removed. But those, who follow the opinion of the author of the *Mitācshara*, must affirm, that the whole interest is forfeited, under the authority of the text, however inconsiderable the damage, as well by the use of a pledge to be used, as by that of a pledge for custody. This is liable to objections. Others say, if the use of the pledge be stipulated by way of interest, there shall be no other interest (XCI). Otherwise, interest is allowed at the rate of an eightieth part and so forth.

If the loss be caused by the act of God or of the king, what should be done? On this point,

## XCIII.

VRĪHASPATI ordains : — IF a pledge be destroyed by the act of GOD or of the king, the creditor shall either obtain another pledge, or receive the sum *lent* together with interest.

“ BE destroyed ; ” become altogether unfit for use.

The *Retnācara*.

IF the debtor cannot immediately discharge the debt, he must deliver another pledge. If he cannot deliver another pledge, he must immediately discharge the debt : for, without supplying the word ‘ immediately,’ the alternative of delivering another pledge or paying the debt would be ineffectual. But, if he be utterly unable to do either, the debt is from that period unsecured by pledge or surety ; and the creditor shall receive the proper interest on such debts.

## XCIV.

VYĀSA : — IF the pledge be destroyed by the act of GOD or of the king, no fault is by any means imputable to the creditor ; and, *immediately* after the loss of that pledge, the debtor shall always be compelled to pay the debt *with interest*, or deliver another pledge.

“ SHALL be compelled to pay the debt,” ‘ with interest’ and ‘ immediately,’ must be supplied. The particle has the sense of “ or,” since the text has the same import with that of VRĪHASPATI (XCIII).

“ SHALL be compelled to pay the debt ; ” shall be required to pay the debt ; for most correct speakers admit the causal passive for certain verbs only, such as go, use, know and the like ; and the verb give or pay could not otherwise be employed in the causal passive : it could not be said, the debtor shall be compelled to deliver another pledge. The same must be understood also in subsequent phrases of *this sort* used by authors.

## XCV.

NĀREDA : — WHEN a pledge, though *carefully* preserved, is  
 Ss spoiled

spoiled in *course of time*, another pledge must be delivered, or the amount of *principal and interest* must be paid to the creditor.

“ SPOILED ;” totally unfit for use. “ The amount ;” the sum borrowed with interest : for the purport is the same with the preceding texts. If a pledged cow or the like in *course of time* become old, or otherwise *useless*, another pledge must be delivered.

# XCVI.

YAṬNYAWALCYA :— BY the acceptance or *actual possession* of a pledge the validity of the contract is maintained. If it be spoiled, though carefully kept, another chattel must be hypothecated, or the creditor must receive the amount of *principal and interest*.

“ By acceptance alone ;” by *actual* occupancy alone. By acceptance and use of a pledge, not by mere indication.

The *Dīpācalicā*.

“ By use ;” alluding to a pledge delivered for use. This will be explained under the head of the validity of pledges.

“ By acceptance” of a pledge for use or custody ; by actual possession or enjoyment, the hypothecation is rendered complete ; not by the mere attestation or execution of a written contract and the like.

The *Retnācara*.

# XCVII.

CĀTYĀYANA :— WHEN a pledge becomes unfit for use or perishes, without any fault on the part of the creditor, the debtor shall be compelled to deliver another pledge ; for he is not exonerated from the debt.

WHEN a pledge becomes unfit for use or perishes, provided that detriment  
or

or destruction be not caused by any fault on the part of the creditor, the debtor shall be compelled to deliver another pledge; in this case the debt is not cancelled by the mere loss of the pledge. The sage makes that evident. "Because" should be supplied. Because the debtor is not in such a case exonerated from the debt, therefore another pledge must be delivered, or payment be made. A similar gloss is delivered in the *Retnācara*.

As for what some affirm, that if a pledged cow or the like die by accident, the creditor's money and the pledgeor's property are lost, that is only founded on approved usage not inconsistent with divine law.

The *Retnācara*.

A SIMILAR remark is made in the *Cbintāmeni* and by BHAVADĒVA and others. The meaning is, that the creditor's loss, when a pledge is destroyed without any fault on his part, is not confirmed by any sage. But local usage on this point should not be abolished.

#### XCVIII.

THE *Vāmena purāna*, cited by the modern VA'CHESPATI and by RAGHUNANDANA:—A MAN should not neglect the approved customs of districts, the equitable rules of his family, or the *particular* laws of his race.

#### XCIX.

IN whatever country, whatever usage has passed through successive generations, let not a man there disregard it; such *usage* is law in that country.

HERE it should be remarked, that, if some *Brāhmaṇa* have borrowed money on a mortgage of his land situated near a river, and that land be afterwards washed away by the river, it is not seen in practice, that the creditor's money is lost. Accordingly, it is said in the *Retnācara*, "a pledged cow or the like." This is founded on the following practice. A cow of small value dying, the debtor asserts, "he did not give sufficient attention to her cure;" the creditor affirms, "I gave the properest remedies." On this question



question a decision could not be passed without minute investigation. Arbitrators therefore mediate and determine, that the loss shall be borne by both parties. This practice appears to be the ground of the usage.

FROM the expression "perishes" or dies, it is evident, that, when a pledged cow or the like dies, and from the expression "becomes unfit for use," that, when it becomes totally unserviceable, the debtor shall be compelled to deliver another pledge. Although a copper caldron or the like and land or other *immovable property*, cannot die, yet, as its total destruction is similar to *the death of an animal*, the same rule should be understood, for, although it be not expressly stated in the texts of VĀĀSA and others, such is the import of the texts. As the principal is forfeited, when the destruction of a pledge is caused by the fault of the creditor, because it is *in effect* the same with such a pledge vitiated; so, in this case also, another pledge must be given, because both are *in effect* the same. This may be inferred from reasoning.

WHY is "destroyed," in the text of VRĪHASPATI (XCIII) expounded rendered to ally unfit for use? The answer is to show, that another pledge must also be given, if the pledge be rendered totally unfit for use. If it be not destroyed by the creditor's fault, from what cause does the loss happen? It must be understood that the loss happens by the act of God or of the king, for the purport is the same with the text of VĀĀSA (XCIV), and with the text of VRĪHASPATI (XCIII).

THE act of the king is *meant of* pillage by an army, and the like; the act of God *includes* the fall of a thunderbolt or the like and this generally; comprehending the act of an enemy the conflagration of a house or the like, the depredations of robbers and so forth. On this and other points the reader himself must deduce just inferences from reasoning.

The Reimancers

### C

YĀGYAWALKYA —MORTGAGED land being carried away by

a rapid stream, or being seized by the king, another pledge of land must be delivered, or the sum lent must be restored to the lender.

THIS text is applicable to the case of a pledge destroyed or lost by fracture, theft, combustion, or the like.

“OR being seized by the king,” *in some cases* it may be legally seized by the king, to sell it for a fine imposed on the debtor, or because the king has not *actually* given the land, which he had declared *an intention of giving* to the debtor, who is a soldier or the like. Illegally it may happen in other cases also.

“ANOTHER pledge,” of land must be understood If he do not deliver that, the sum *borrowed* must be repaid by the debtor with interest

The *Retnatarā*

“ANOTHER,” that is, other than the pledge originally delivered “A pledge of land,” this is reasonable but if other land cannot be delivered, any other pledge may be given However, if the former pledge were delivered for enjoyment, he must now also give a pledge adapted to that *purpose* Or, if that cannot be, he must give a pledge for confidence only, and pay a sum equal to the value of the usufruct of the former pledge until the debt be discharged But if separate interest be paid, and the use of the pledge be allowed through complacency, by these words, “you may use the pledge,” in that case the value of usufruct need not be paid

IT is thus evident, that, if mortgaged land be destroyed, the loss falls on the debtor alone “Land” is an instance only, suggesting also line, gold, and the like “Carried away by a rapid stream” is merely illustrative of a loss happening by the act of GOD, for it has the same import with the following text.

## CI

CĀTĀĀNA:—WHATEVER pledge has been lost by the act

## SECTION II.

## ON THE REDEMPTION OF PLEDGES.

WHEN the debtor, tendering the sum due, claims the release of the pledge, what should be done by the creditor? A small part only being tendered, should it be accepted; or should the whole amount of the debt *be alone accepted*? As to the first supposition,

## CH.

VRĪHASPATI ordains:—THE whole amount due to the pledgee not being paid, he shall on no account be compelled to restore the pledge against his will, *nor shall it be obtained from him by deceit or confinement.*

“THE pledgee;” in the sixth case, but with a dative sense; to him, who has received the pledge; namely to the creditor. If the whole amount of principal and interest be not paid to the creditor, he shall not be compelled by the king to restore the pledge against his will. A pledge must therefore be released by the creditor on receipt of the entire sum *due*, not on receipt of a part only. If the greater part of the whole debt have been discharged, shall the pledge be retained on account of the smaller part, or not? In answer to this question the present text is propounded. The sage adds, he shall not be forced to restore it by *legal* deceit or any other of the modes of recovery.

“By deceit or confinement;” the first term is explained by some, deceit or fraud. “Confinement;” sitting constantly at his gate, or the like, as will be explained. The word “or” is indefinite, also suggesting a law-suit and the like. It should not be objected, that from the terms of the definition of *lawful* confinement (CCXXXIX) its acceptance is restricted to payment obtained from a debtor. Such a definition, being merely explanatory, is not restrictive.

AGAIN; when a debtor, having delivered a pledge of great value to the

creditor, and repenting thereof, wishes to exchange it for one of less value, then also the exchange must depend on the consent of the creditor. This must be understood from parity of reasoning as is observed in the *Retnacara*, 'when the whole sum due and secured by the pledge is paid to the creditor, who holds that pledge, then only must the pledge be released, however great its value may be.' The debtor saying "receive some other pledge, and restore the costly pledge, with the delivery of the other pledge, I will give thee a written contract, or cause the delivery to be attested," in this case also the king shall not force the restoration of the pledge by the modes of deceit, confinement or the like. Nor shall the pledge be released on payment of a small part of the debt only. "Receive some other pledge &c" is a supposed speech of the debtor. In this case also, the creditor shall not be compelled to restore the pledge against his will.

A DEBT has been contracted on the mortgage of a piece of land measuring a *crośa* in circumference, a part of the debt has been afterwards paid, but the land is accidentally carried away by a rapid stream. This text may be expounded as restraining a creditor, who in that case demands a mortgage of land measuring a *crośa* in circumference. But the reading is (*chittrena rachitena*) by painting or dying, and by manufacture, instead of (*chitrena charitena*) by deceit and confinement. Thus, when a pledge of land or the like must be delivered to a creditor, who had already received a pledge, the debtor shall not be compelled to deliver a pledge for the whole value, similar to the former pledge of valuable land or the like. In what case? To this the sage replies, if the debt be not fully paid, that is, if the whole be not paid, but a part be paid. If a part be paid "by painting or dying or by manufacture" "By dying," by the practice of the art of dying silk. "By manufacture," by the practice of art in the construction of a house or the like. "Or" is indefinite; and direct payment by the practice of any other art is thereby comprehended in the text. This is a very modern interpretation.

OR the word "its" may be supplied. Thus, a pledge being lost by the act of God, another pledge should be given to the creditor, who received the former pledge, but, if its amount or value have been made good by the debtor himself in the practice of some art, as dying or the like abovementioned, the debtor

debtor shall not be compelled by the king, against his will, to deliver a pledge for the whole value, that is, a fresh pledge of great value. It is not affirmed, that such delivery is requisite. Consequently, the original pledge being lost, and the debtor being unable to give another pledge of the same nature, or otherwise make good its value, a pledge of great price has, in the mean time, been delivered; the intermediate valuable pledge must be restored by the creditor to the debtor, who claims redemption of that pledge, having afterwards made good the value of the original pledge by the practice of his art.

, THIS is general. The debtor immediately pays some part of the value of the former pledge, and will deliver another pledge at a future time; to give confidence therein, he delivers a writing or attestation: in that case also the rule is the same. This other exposition follows the gloss of CHANDĒSWARA. But on this construction, “by painting or dying, or by manufacture, the amount being *partly though* not fully paid, *he shall not be compelled to deliver a pledge for the whole value*” (*swadattē c’bīlam*,\* instead of *adattē rī bē c’bīlē*) is exhibited as the proper reading in some books. To expatiate would be vain.

• ON the other reading (*cbitrénācharitēna*) the sense may be the same; for the crude verb “*char*” bears the sense of “act,” exhibited in its derivative “*āchāra*” usage or practice, and in other instances. In either case arising on these two interpretations, it must be affirmed, that, if the debtor tender payment of a part only of the debt, the creditor need not release the pledge: for no law ordains, that it shall be then released. According to CHANDĒSWARA another text of VRĪHASPATI (CIII) ordains, that a pledge shall only be released when the whole amount of the debt has been paid. This will be stated hereafter.

SIMPLE men attribute an active sense to the word “pledgee” in the sixth case. Thus the construction is, “the amount, which should be paid by the

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\* I TRANSLATE IT “not well or fully paid,” instead of, “paid by *the man himself*.” The term is expounded both ways in preceding paragraphs, but why should a new pledge of less value be given, if the debt have in the mean time been paid? T.

pledgee or creditor, not being delivered, the debtor shall not be compelled by the king, in any of the modes of recovery, by deceit, confinement, and the rest, to deliver the pledge to the creditor." Consequently, if the debtor, having executed a contract of hypothecation, has not received the whole loan, although he have demanded it, and has therefore obstructed the enjoyment of the pledge, this text establishes the rule of decision on such a case. It will be mentioned, that hypothecation is not valid on a writing alone without enjoyment. These interpretations are either founded on the text, or on the reason of the law. They should all be admitted.

As to the second question, (*the whole debt being tendered, must it be accepted?*) if the debtor have contracted the debt on an agreement, that the pledge, consisting of land or the like, shall be enjoyed so long as the principal sum remain undischarged, but that no interest shall be paid independent of the pledge, in that case, the principal alone being tendered, it must be accepted. The same sage ordains it.

1

## CIII

VRĪHASPATI —WHEN the debtor, tendering the principal sum, demands the pledge, even then it must be released, otherwise, the creditor is criminal.

THIS concerns a pledge to be used for an indefinite period

The Retnacara

"OTHERWISE," that is, if he procrastinate, coveting the enjoyment of the pledge, or if he covet and demand other interest. The following text declares an offence as well in regard to pledges for custody as others.

## CIV

YAJNYAWALKYA.—To the debtor, who comes to redeem his pledge, the creditor shall restore it or be punished as a thief, and, if the creditor be dead or absent, the debtor may pay the debt to his kinsmen, and shall take back his pledge.

“ WHO comes to redeem his pledge ;” who approaches the creditor, bringing what is due to the creditor, *namely* the principal sum with or without interest. To him the pledge shall be restored by the creditor, after receiving the money from the debtor. Otherwise, if he do not restore it, he is guilty of stealing *the pledge* ; *that is, he shall be punished.*

CHANDE'SWARA.

IF the creditor be dead, or have gone to another country, what must be done ? The sage replies, “ if the creditor be *dead or absent*, the debtor may pay the money to his kinsmen ;” to his sons and the rest ; to his heir, or to any person charged with the support of his family : “ and he shall take back the pledge” from the sons and the rest.

“ To his kinsmen ;” literally, to his family ; that is, to his sons and the rest.

The *Retnâcara*.

“ To his family ;” to his servant or agent.

The *Mitâcsharâ*.

SHOULD the son or other *competent* person refuse to restore the pledge, then, by the same reasoning as before, he is guilty of theft. If any dispute arise concerning the receipt of his property by either party, that must be determined, and the delivery and receipt made *good*. If a false plea be set up, through avarice, by the creditor, he shall be punished as a thief. If the son of *the pledgee* say, “ I have not power to accept payment of the debt without my father's consent,” what must be done in such a case, will be mentioned *in its place*. The debtor being *dead or absent*, if his son or other heir come to the creditor or to his son, for the purpose of paying the principal sum with interest, then also, as before, must the pledge be restored. Such is the unexceptionable method of CHANDE'SWARA.

To the debtor, who comes to redeem his pledge, it must be restored by the creditor on receiving the principal and interest.

The *Dîpalcikâ*,

BUT

BUT HELA'YUDHA expounds the first half of the text of YAJÑAWALKYA (CIV) and the text of VRĪHASPATI (CIII), 'having mortgaged a village or the like, on the next day he comes to pay the debt, but the creditor, coveting interest, neither accepts payment of the debt, nor relinquishes the mortgage, in that case, he shall be punished as a thief. Ultimately there is no difference. It is only necessary, that a pledge be restored by the creditor, on receiving from the debtor the amount then due, *i.e.* the principal sum with or without interest. Or, if the creditor be not at hand, the debt must be paid to his son or other representative, and from him must the pledge be received, as abovementioned. HELA'YUDHA, grounding his gloss on that of CHANDESWARA, has in no respect contradicted it.

WHEN land is mortgaged on these terms, "this land shall be enjoyed by thee to the end of such a period," the land shall be enjoyed to the end of that period, the debtor cannot compulsively redeem the pledge on the second day after the debt was contracted for there is no such special law, and the texts of VRĪHASPATI and others ordain penalties for other cases. This appears from the condition, that no definite period have been fixed, as stated in the gloss of CHANDESWARA, 'this concerns a pledge to be used for an indefinite period. By HELA'YUDHA's expression, "on the second day," it is intimated, that a debtor may redeem a pledge by the payment of the principal only on the second day, on the subsequent day or later he must pay the debt with interest but, if the stipulated period be unexpired, he cannot redeem the pledge for that is suggested by the phrase, "on the second day," and by the condition, as specified by CHANDESWARA, that it be unlimited as to time, and that is not contradicted in the work of HELA'YUDHA.



tion CHANDE'SWARA has said, " a pledge to be used for no definite period " and this must be acknowledged even by HELA'YUDHA, for the following text is expounded, " what has not been held to the close of its term "

## CV

VRĪHASPATI:—WHEN a house or field mortgaged for use has not been held to the close of its term, neither can the debtor obtain his property, nor the creditor obtain the debt.\*

HOWEVER two cases have been stated by two authors, in which the debt may be discharged by payment of the principal only. Such is the difference.

IF the creditor be dead or absent, YAJÑAWALKYA has ordained, that the pledge may be redeemed by payment of the debt to his son or other representative. The same *legislator* propounds another case

## CVI.

YAJÑAWALKYA:—OR appraised at the value it then bears, it may remain with the creditor, exempt from interest.

THE pledged chattel, then appraised by men skilful in valuation, may be fixed in the creditor's possession, with the attestation of witnesses. Thence forward the principal, though not paid, carries no interest, for the debt is in a manner discharged by the appraisement of the pledge. If the creditor be not at hand, the debtor may redeem the pledge from his sons or other *representatives* and pay the debt to them, or he may fix the pledge in the creditor's hands at the value it then bears. the particle " or " intends this alternative.

AN alternative is of two sorts, optional or regulated by the law. " Optional " may be instanced in written contracts and attestation, at the option

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\* See the gloss on this text cited again at v. CXV. III

of the creditor the debt may be delivered with a writing or with an attestation. "regulated by the law" may be exemplified in debts quadrupled or octupled, quadrupled, if the loan consisted of cloths or the like, octupled, if clarified butter and the like were lent and here an alternative arises in respect of legal regulation.

CHANDĒSWARA intends only a regulated case. For example, if the creditor be dead, and his son or other heir be present, the pledge may be redeemed by paying the debt to him only. By parity of reasoning the same may be done, if the creditor reside in another country, if he be confined by the king, have absconded through fear of the king or the like be afflicted with disease, be insane or the like. Consequently, when a competent creditor is absent and his son or other representative is present, if the debtor can redeem the pledge from the son or other representative, and the son or representative can accept payment from the debtor, he may redeem the pledge by payment of the debt to that son or representative. This is one case. But if the son or other heir reside abroad with the creditor, or if the creditor be dead and his son or heir reside in another country, or be confined by the king or have absconded, or if the son or heir say, 'my father, who resides in another country knows all the circumstances, I am totally uninformed, or if the creditor or debtor dispute the matter; in all these cases the debtor must fix the pledge in the hands of the creditor, appraised at the value it then bears. This is the second case.

If he and his family reside in another country, how should mortgaged land or the like be fixed in the hands of the creditor? It is answered, 'through him, who transmits the produce of land or the like situated in one province, to a creditor residing in another province such a pledge is enjoyed or, in whatever manner the pledge was previously possessed, even so it may be fixed in his hands.' But this case supposes the debtor's wish to part with the pledge by selling it, or to redeem it by borrowing money elsewhere.

Thus, if the creditor be not so circumstanced, that he can restore the debt but the debtor, to sell it, or having borrowed money elsewhere,

wishes to redeem the pledge, what must be done? For this YĀJNYAWALCYA provides, " or appraised, it may remain with the creditor."

CHANDESWARA.

SINCE the creditor is not present and competent, the debtor's wish cannot be gratified. But, if the debtor have no desire to *redeem the pledge*, by whose desire should the pledge be redeemed? It must wait the debtor's wish: and his desire to part with the pledge is ineffectual without some mode of payment of the debt. It must therefore wait his sale of the pledge, or his borrowing money elsewhere. This, however, is merely illustrative; for the same rule is apposite, if the debtor wish to redeem the pledge, having obtained money in alms, by commerce, or the like.

ALTHOUGH the pledge cannot be sold to another while the debt remains undischarged, since redemption of the pledge without payment of the debt is denied by the text of VRĪHASPATI (CH), still, if he could give confidence to the purchaser by a surety or otherwise, the debtor may have received the price. To such a case this rule is applicable. The two cases, as mentioned by YĀJNYAWALCYA and connected by the word " or " which intends the regulated alternative, must be understood only when the creditor is present and competent.

IN the *Dīpāvalī*, ŚU'LA'PA'NI observes, if the pledge for any reason be not restored to the debtor, the pledge, appraised at its *char value*, may remain in the house of the pledgee, exempt from interest. The expression " for any reason " comprehends other cases also, such as that stated by CHANDESWARA. For example; the creditor is present and competent to *view transactors*, but the pledge, either gold weighing a hundred *pa'as*, or a horse which had been seen by many persons, is at the creditor's house in another province, and he cannot immediately go thither, or a slave or the like, delivered as pledge, has gone to another country on business; in these cases, the pledge should be appraised by men conversant with the value of things, after learning both from the debtor and creditor, that the gold is unmixed with other metals and so forth, or that such is the age or strength of the horse or slave, and so forth; and the debtor should fix the pledge in the hands

hands of the pledgee, declaring " the pledge ascertained at such a value by appraisers " and witnesses, or certified in writing, shall remain in thy possession.' So, in other cases also Ultimately there is no contradiction between those *authors* However, the appraisement is made in such a case by desire of the creditor, or debtor, or both This exhibits a portion of the subject, which CHANDÉSWARA also has treated partially

BUT, if a period were stipulated, the creditor entertains no such wish before the period expire, or if he do he has no right to the use of the pledge and interest cannot be forbidden at the will of the debtor. When the period has expired, the debtors *option* prevails At his choice the pledge may be redeemed, or a value affixed to it, for, if he do not then redeem it, his property is devested (CVII) But in a case unlimited as to time, the redemption, or foreclosure, of the mortgage depends solely on the will of the debtor To expatiate would be vain

HERE the valuation of a pledge only is mentioned, not its sale In this case, the creditor returning from abroad may restore the pledge on receiving so much money as was due when the pledge was valued Herein the *Retnacara* concurs The same should be understood in the proposed case of a slave, and also in other cases It should be here observed, that, if the pledged slave or other pawn, having grown old or the like, bears a less value when the creditor, returning from abroad, restores the pledge, than was the value at the time of appraisement, the loss must fall on the creditor alone, for a value was then affixed merely that the principal may bear no further interest But if the value be enhanced by circumstances of season or the like, the profit does not accrue to the creditor, for YAJNYADATTA has no true property in the value of a chattel belonging to DEVADATTA But the loss falling on the creditor is the consequence of his fault in not then restoring the pledge In this there is nothing incongruous

If the value of land or other mortgaged property, which is permanent, be reduced from the circumstances of the times or the like what is the rule? In that case also the loss falls on the creditor, since the debtor may say, "the value is only now reduced in consequence of a dearth or the like, when I offered

“offered to redeem the pledge, it bore a greater value” By specifying “the value it then bears,” the sage intimates generally a *possible* loss falling on the creditor, *he does not state* specially, that in some instances no loss falls on the creditor. But in fact all this must be understood of the natural price of commodities. If the debtor, redeeming the pledge from the creditor on his return from abroad, sell it for a low price through the exigence of his affairs, he is not entitled to recover the difference of price from the creditor, but only when the just price *is reduced* by circumstances of season. This should be held reasonable.

WHEN mortgaged land or the like has been appraised, by whom should it be enjoyed? And is a pledged slave or the like to be employed or not after the appraisement? On these doubts it is said, the use and profit of a pledge is the interest on it, interest ceasing, it follows, that the *usufruct* ceases. If the pledge were such as might be used *without detriment* (for instance, a tree or the like) but if the use of it were not authorized, the use of it was previously unlawful, surely now, after the appraisement, it is *unlawful* as before. The pledge being nevertheless used in the subsequent period, half the benefit must be paid to the debtor, but used though *expressly* forbidden, the whole profit must be made good to the debtor. If he assent to it, usufruct must be admitted as authorized by him. But the expression of YAJÑYAWALKYA, “may remain with the creditor,” has been expounded, may be fixed in the creditor’s *possession or enjoyment*, supposing the case where the usufruct is not forbidden. Accordingly ŚULĀKAṆI has said, “the pledge may remain in the house of the pledgee, exempt from interest,” not, “it may remain in the pledgee’s *possession or enjoyment*” Thus may the law be concisely stated.

YAJÑYAWALKYA (XLVI) propounds a form of redemption of a pledge when the creditor is present. This text concerns the case where the thing was pledged on these terms, “when the double sum has been received from the use of the pledge, it shall be restored by thee” That is, provided interest were stipulated; else *the pledge must be restored* on payment of the principal only. This is called in the world a voidable pledge.

## CVIII.

VRĪHASPATI:—WHEN land or other *immoveable property* has been enjoyed, and more *than the principal debt* has accrued therefrom, then, the principal and interest having been realized, the debtor shall obtain his pledge.

WHEN land or the like has been enjoyed, and by that enjoyment more than the amount of the principal, that is, interest, *has been received*, surely the principal *sum* has been obtained : repeating this, the sage propounds the law, “ the principal and interest *having been realized*” &c. The apposition is connective. CHANDĒSWARA delivers a similar gloss. This must be understood only when it was agreed, that the pledge should be restored after the principal and interest have been realized ; for it coincides with the text of YĀJNYĀWALKYA above cited. The same *legislator* expressly declares it.

## CIX.

YĀJNYĀWALKYA:—WHEN a debtor mortgages land to his creditor, declaring and specifying, “ this shall be enjoyed by thee, even though interest cease *on becoming equal to the principal* ; ”

2. That pledge shall be restored to the debtor, whenever the principal and interest shall have been received. This is declared to be the legal rule concerning pledges for loans on interest.

“ SPECIFYING ,” ascertaining. “ Although interest have ceased ; ” although it have reached the limit of interest, the pledge shall be nevertheless enjoyed until the principal and interest be paid.

The *Retnācara*,

If the pledge be delivered with an agreement, that it may be used even after the period, in which interest accumulates to its highest limit, the enjoyment of it is reasonable even after the period in which the highest interest accumulates. In answer to the question, how long may it be used ? This

text particularly states, so long as the principal and interest are not acquitted by the use of the pledge, the creditor may use it. The import of the text may be thus stated on a full consideration of the gloss delivered in the *Retrácara*

It should not be affirmed, that this text concerns only the case of a special agreement, and the preceding text (CVIII) the case where no special agreement has been made. and thus, if no period have been stipulated, the creditor must release the pledge when the debt is doubled; but, in the case of a special agreement, the pledge shall be enjoyed until the debt be discharged, and the text permits the pledge to be so long enjoyed. The following rule of VISHNU denies the redemption of the pledge without a special agreement, even though the debt be doubled.

## CX

VISHNU:—EVEN though the utmost interest have accumulated, *the creditor need not restore* an immoveable pledge, without a special agreement.

THE meaning of the text (CLX) is thus, when the debtor delivers a pledge declaring and specifying, "this land shall be enjoyed by thee (the creditor) even though interest cease *on becoming equal to the principal*," (for the interest has accumulated *to its utmost limit*, when interest ceases,) that pledge *shall be restored*, when the principal has been received. It is consequently suggested, that a pledge may be used until the principal sum be discharged, even though interest have *regularly ceased*. Or the text (as some remark) may be expounded in a different import. When a pledge is delivered with an agreement, that it shall be enjoyed even though interest cease, in that case, when the interest has been received from the use of the pledge, it must be restored, if the principal be discharged out of other funds; but if not, the pledge may still be retained.

## CXI

YA'JNYAWALCYA.—BUT a pledge shall be enjoyed until actual payment of the debt. \*

If a debt, amounting to one hundred *suvernas*, be nearly discharged, but five *suvernas* remain due, the sense of the text is, *that so long as that remain unpaid, the pledge shall be retained*. No law directs, that the half or quarter of the pledge shall be restored. On the other hand, in the foregoing gloss on the text cited from VR ĪHASPATI (CII), it is not positively ordained, that it may not be restored. But this seems a great disparity. If any particular practice subsist in certain countries, it should be deemed satisfactory. This should be held by the wife. In fact, it follows from the condition stated in the text of VR ĪHASPATI above cited (CII), "against his will," that the pledge may be restored if the creditor consent, and such consent is proper in this case, since the use of a pledge adapted to a large sum is improper, when a small sum only remains due.

How is the principal or the interest liquidated from the use of the pledge? The form may be thus stated: when arable land has been mortgaged, and a debt contracted, in the month of *Ṣravana*, the produce being gathered in the month of *Pauṣa*, and the interest due from *Ṣravana* to *Margāśīrṣa*\* being liquidated from the price of that produce, if the amount exceed *the interest*, the principal may be liquidated, if it be deficient, payment will be taken from the value of the produce obtained in the following year. If it be annually deficient, the pledge may be enjoyed for a longer time than six years and eight months, even until the interest be fully discharged. afterwards, on payment of the principal, the pledge shall be delivered up. But when the *exact* amount of interest, neither more nor less, is obtained from land in the month of *Jyāṣṭhā* (the debt being contracted on the mortgage of inhabited ground, *the rent of which is payable in that month*, a period of thirteen years and four months must be completed. in that case the debt is discharged with interest, on receipt of half or a part only of the amount of rent for the current year.

THIS occurs in the case of legal interest at the rate of an eightieth part of the principal. But the use of a pledge, until the principal sum be paid from other funds, occurs in the case of interest by enjoyment. If the principal be paid in the month of *Jyāṣṭhā*, the rent of the mortgaged ground



must be received in due proportions by both parties.\* As a pledgee may not receive the whole rent in the month of *Pausha*, when the owner, contracting the debt in the month of *Cārtica*, mortgages land which affords annual rent in the month of *Pausha*, but shall receive the proportion of rent for two months; so, if payment be made, after some years, in the month of *Śrāvana*, he shall receive the proportionate rent for seven months of the current year; that is seven parts of the whole rent divided into twelve parts. But if he receive the whole rent, inadvertently, in the month of *Pausha* of the first year, then deducting a sum sufficient to discharge the interest, the surplus should be applied to liquidate the principal. In such circumstances, the principal being annually diminished, it is fully liquidated in a short period. If the land cannot yield so much rent in a subsequent year, the debtor must make good the sum from his own funds in conformity with the agreement. If it produce a surplus, that must be applied to the liquidation of the principal; and interest shall not subsequently be paid on that part of the principal.

YET, if the agreement bore, that the pledge shall be enjoyed until the principal be paid, the same rule prevails in the case of a mortgage of inhabited ground; for, since rent should be daily receivable for the occupancy of the ground, it is proper, that the creditor should receive the rent accruing from the date of the loan. If land or the like be mortgaged, which yields rent on account of the produce, receivable by custom on a day certain, and if the payment be settled for the month of *Pausha*, then, although the whole rent for that year would otherwise have been received, yet, if the debt be paid in the subsequent month of *Mārgaśīrṣa*, it appears from the reason of the law, that the creditor shall not receive the rent of that year; since a day has been set for the payment of rent on account of produce, and the land was possessed by the creditor on that day in the year when the loan was made, but had been redeemed before that day in the year when the debt is paid. Still, however, as an inconsistency would occur in practice, because no interest would be received, when a debt, contracted on the security of such a mortgage in the month of *Māṣṣā*, was discharged in the earlier month of

\* BECAUSE the full amount of interest was realised in the eighth month of the seventh year.

*Mārgaśīrṣa*, in a subsequent year, the matter must be otherwise regulated, by a distribution of the rent as before, or by yielding the rent of the subsequent year.

If a milch cow or the like be pledged for use and profit, the interest should be liquidated, in conformity with the agreement, from the computed daily profit; and, if possible, the principal should be liquidated. This induction has the authority of law. With the consent of the debtor and creditor, an adjustment is formed on a middle valuation settled by arbitrators. Such is the current practice.

"THE double sum," in the text of YA'JNYAWALKYA (XLVI), supposed a loan of gold or the like; but, if clothes or the like were lent, a treble sum and so forth must be understood, as stated in the section on limits of interest. However, when the agreement was in this or similar forms, "I will restore the pledge, when the double sum has been received," the creditor need not restore the pledge before the debt has been discharged. Thus VIṢṆU, having premised, that the creditor must restore the pledge, subjoins the text above cited (CX).

MANY special agreements may be made in respect of pledges. Some of these shall be now mentioned. 1. "This land is mortgaged for a debt of twenty *suvernas*; when forty *suvernas* have been realized from the use of it, you must release the mortgage." 2. "If I do not redeem the pledge when the principal has accumulated to forty *suvernas*, this shall become thy absolute property." 3. "The pledge shall be enjoyed by you, until the principal and interest have been realized." 4. "If I do not then redeem the pledge, when the principal and interest have been realized, it shall become thy absolute property." 5. "The pledge shall be enjoyed by you for ten years." 6. "The pledge shall be released on the receipt of the principal sum at the end of three years." 7. "If I do not redeem the pledge at the expiration of ten years, it shall become thy absolute property." 8. "If I do not redeem the pledge by paying the principal sum at the expiration of three years, it shall become thy absolute property." 9. "The pledge shall be enjoyed by you for three years, I will afterwards

must be received in due proportions by both parties.\* As a pledgee may not receive the whole rent in the month of *Pausba*, when the owner, contracting the debt in the month of *Cártica*, mortgages land which affords annual rent in the month of *Pausba*, but shall receive the proportion of rent for two months; so, if payment be made, after some years, in the month of *Sravana*, he shall receive the proportionate rent for seven months of the current year; that is seven parts of the whole rent divided into twelve parts. But if he receive the whole rent, inadvertently, in the month of *Pausba* of the first year, then deducting a sum sufficient to discharge the interest, the surplus should be applied to liquidate the principal. In such circumstances, the principal being annually diminished, it is fully liquidated in a short period. If the land cannot yield so much rent in a subsequent year, the debtor must make good the sum from his own funds in conformity with the agreement. If it produce a surplus, that must be applied to the liquidation of the principal; and interest shall not subsequently be paid on that part of the principal.

YET, if the agreement bore, that the pledge shall be enjoyed until the principal be paid, the same rule prevails in the case of a mortgage of inhabited ground; for, since rent should be daily receivable for the occupancy of the ground, it is proper, that the creditor should receive the rent accruing from the date of the loan. If land or the like be mortgaged, which yields rent on account of the produce, receivable by custom on a day certain, and if the payment be settled for the month of *Pausba*, then, although the whole rent for that year would otherwise have been received, yet, if the debt be paid in the subsequent month of *Márgasirsa*, it appears from the reason of the law, that the creditor shall not receive the rent of that year; since a day has been set for the payment of rent on account of produce, and the land was possessed by the creditor on that day in the year when the loan was made, but had been redeemed before that day in the year when the debt is paid. Still, however, as an inconsistency would occur in practice, because no interest would be received, when a debt, contracted on the security of such a mortgage in the month of *Márga*, was discharged in the earlier month of

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\* Because the full amount of interest was realized in the eighth month of the seventh year.

*Mārgāśīrṣa*, in a subsequent year, the matter must be otherwise regulated, by a distribution of the rent as before, or by yielding the rent of the subsequent year.

IF a milch cow or the like be pledged for use and profit, the interest should be liquidated, in conformity with the agreement, from the computed daily profit; and, if possible, the principal should be liquidated. This induction has the authority of law. With the consent of the debtor and creditor, an adjustment is formed on a middle valuation settled by arbitrators. Such is the current practice.

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“ afterwards redeem it by paying the principal sum, if I do not redeem it  
 “ at the expiration of the fifth year, it shall become thy absolute property ”  
 10 “ Enjoy the pledge for ten years, and you may subsequently enjoy it  
 “ unless I then redeem it, if I do not redeem it at the close of the twelfth  
 “ year, it shall become thy absolute property ” 11 “ This pledge may be  
 “ used by thee so long as interest accrues, afterwards, on receipt of the  
 “ principal, the pledge must be restored ” 12 “ If I do not then redeem  
 “ it, the pledge shall become thy absolute property ” 13 “ If I do not re-  
 “ deem it within two subsequent years it shall become thy absolute proper-  
 “ ty ” 14 “ The pledge may be used until I pay the principal sum ” 15  
 “ If I do not pay the principal and redeem the pledge, it shall become  
 “ thy absolute property ”

“ MORTGAGING this village or the like, I borrow twenty *sur erras*, from  
 “ this village thou shalt receive interest on that sum at the rate of an eigh-  
 “ tieth part of the principal, the remainder shall be received by me ” Ten  
 forms of this agreement, as above stated make twenty eight forms \*  
 Again; mortgaging a village or the like the debtor says, “ half or a quar-  
 “ ter of the produce of this village shall be enjoyed by you, the rest I will  
 “ take ” Since there are also ten forms of this agreement, forty modes of  
 agreement have been suggested “ Accepting this village or the like in pawn,  
 “ lend twenty *sur erras* ” Forty other forms may be stated in this mode-  
 “ Accept this village in pawn; from its produce supplying the expenses  
 “ incident to it, give me ten *sur erras*, and take the remainder yourself ”  
 In this mode there may be numerous forms of agreement and various  
 forms exist in fixing the term of the mortgage and so forth To avoid pro-  
 lixity they are here unnoticed, but they are numerous The law concern-  
 ing them may be understood by the reputation of the *rad's* *litered ref* *Th* *g*  
*otlers* But a contract for hypothecating *the merits* of ablutions in the Ganges,  
 and the like, shall be mentioned

THE settled law in respect of these may be thus stated Under the first 2-

\* I have now corrected the obvious error in the number. It is important. However among the  
 officers concerned particularly and for a long time the difficulty cannot be accommodated to the interests of  
 the “chakras” We must therefore read twenty &c instead of two &c, and correct the following  
 numbers by making 6, instead of 10.

greement, the sum of forty *suvernas* being completed, if the debtor, tendering the principal sum, offer to redeem the pledge, it must be then released. Such is the opinion intimated in the *Retnâcara* by the condition stated (in the gloss on the text CIII) “ a pledge to be used for an indefinite period.” It has been already discussed. But computing the sum realized from the use of the pledge in the period during which it has been held, and fully liquidating the forty *suvernas*, he may redeem the pledge. According to the *Dīpalcikā*, if he do not redeem the pledge when forty *suvernas* have been realized, it becomes the sole property of the creditor.

## CXII.

YĀJNYAWALCYA:—THE pledge is forfeited, if it be not redeemed when the debt is doubled; *since it is* pledged for a stipulated period, it is forfeited at that period: but a pledge to be used *for an unlimited time* is not forfeited.

THE debt being doubled, if the debtor do not *then* redeem the pledge, it is forfeited to the creditor. A similar exposition is delivered in the *Calpateru*. But HELĀYUDHA says, ‘ this text concerns a pledge for custody only:’ in which opinion the author of the *Mitâcsharâ* concurs. Their notion appears to be this; if a beneficial pledge be not redeemed, although twice the principal have been received from its use, the creditor sustains no loss: why then should it be forfeited? But, since a pledge for custody is not used, why should the creditor long preserve unprofitably the property of another? The pledge is therefore forfeited by a debtor, who has stipulated a period for redemption.

OTHERS think, that such reasoning, which is not authorized by the law, may not be trusted. At the stipulated period, whether before or after the principal is doubled, a pledge limited as to time is forfeited, and becomes the property of the creditor: and this concerns the seventh form of agreement. According to this opinion, what is the import of the phrase, “ but a pledge to be used is not forfeited ? ” It concerns a pledge delivered for use, in the fourteenth form of agreement, “ the pledge may be used until I pay the principal sum.”

BUT, although it be cursorily intimated, that both *pledges* become the sole property of the creditor, whenever the principal is doubled, provided the debt consisted in shells, whether pledged for use or custody, still, as reasonable practice no where in the universe shows the creditor's property without the consent of the pledgeor, when brass or the like has been pledged with a special agreement, CHANDESWARA, therefore intimating, that it is not admissible in his opinion, by adding "it must be otherwise expounded," himself propounds the case, that is forfeited which has been pledged with a declaration in this form, "if the pledge be not redeemed when the principal is doubled, it shall become thy sole property," Consequently the second form only is intended by the expression of YAJÑAWALKYA, "the pledge is forfeited"

THIS is founded only on the inconsistency of a *different* practice Thus, under the first form of agreement, if the pledge be not redeemed after the double sum has been realized, a moveable pledge may be used, notice being given to the debtor or his family (CXIX) The debtor's property is not then forfeited, for there is no proof of *such forfeiture*, and nothing opposes this application of the phrase, "a pledge to be used is not forfeited" But immoveable property should be restored when the double sum has been realized Such is CHANDESWARA's opinion and that is proper, for the land or other thing, which is pledged, belongs to the debtor while it remains a pledge, as much as it did before, but he cannot dispose of it at pleasure, while it is a pledge how then should the debtor's property be devolved when the principal is doubled, since there is no efficient contract in the nature of gift or sale? It should not be objected, that, under the authority of the text, the forfeiture of property in a *pledge* unredeemed is acknowledged in the *Mitakshara* That is improper, since it is difficult to deduce a forfeiture not previously stipulated, from a text which may be otherwise expounded It should be affirmed, that forfeiture of property only takes place in *cases intended* by the text of YAJÑAWALKYA on title by long possession.

### CXIII

YAJÑAWALKYA —HE, who sees his land possessed by a stranger for twenty years, or his personal estate for ten years, without asserting his own right, loses his property in them.

FOR YĀJNYAWALCYA in a subsequent text declares property not forfeited in certain cases.

## CXIV.

YĀJNYAWALCYA:—EXCEPT pledges, boundaries, sealed deposits, the wealth of idiots and infants, things amicably lent for use, and the property of a king, a woman, or a priest verfed in holy writ.\*

THIS also is subsequently mentioned by CHANDĒSWARA. What is propounded by the sage (CXII), states the cause; “pledged for a stipulated period &c;” that, for which a specifick term was settled, when his own property should be divested and property should be vested in the creditor, is forfeited at *the expiration of that term*. In whatever case, and in whatever mode, the owner has agreed to the forfeiture of his own property and the consequent property of another, so shall it of course be. The period, in which the principal is doubled, is a specifick term: this also is a stipulated term. Not fearing repetition, *the sage* has assigned a cause of forfeiture. Thus may the law be concisely expounded.

“A PLEDGE to be used is not forfeited;” a pledge to be used for an unlimited time is not forfeited, even though *unredeemed* for a thousand years. But if a period be stipulated, other texts are found, *which provide for that case*.

The Retnācara.

SINCE there can be no enjoyment of produce from a pledge for custody only, a pledge for use is meant. “For an unlimited time;” a pledge, for which no time has been stipulated, when the owner’s property shall be divested and property be vested in the creditor. “But, if a term be stipulated;” if a pledge be delivered with a term fixed for annulling his own property and vesting property in another, other texts of sages, quoted or unquoted, are found, *which provide for that case*. Consequently, whatever text declares the creditor’s property in the pledge, concerns this alone.

\* This last hemistich was not cited in this place.



Even where the principal sum has been doubled, and the forfeiture of property has been stipulated, VRĪHASPATI propounds a legal period *for the equity of redemption*.

## CXV.

VRĪHASPATI:—AFTER the time for payment has past, and when interest ceases *on becoming equal to the principal*, the creditor shall be owner of the pledge: but the debtor has a right to redeem it before ten days have elapsed.

## CXVI.

VYĀSA:—GOLD being doubled, and the stipulated period having expired, the creditor becomes owner of the pledge, after the lapse of fourteen days.

2. BUT a pledge to be used, of which the term has elapsed, the debtor shall *only* recover, on *then* paying, from other funds, the exact amount of the principal.

“ AFTER the time for payment has past;” when the term, which was settled in regard to the pledge, is completed. For example; ten years or the like in the 7th form of agreement; three years or the like in the 8th; five years or the like in the 9th; twelve years or the like in the 10th; two years after interest has been fully liquidated, in the 13th; and, even in the 14th form, any time subsequent to the payment of the principal sum: in these and similar instances the period expires. How can it happen, that a man should have paid the principal, and not have redeemed the pledge? It may happen, when the principal sum has been any how received, through the intervention of another, but the debtor, apprehensive of *punishment* on account of some offence, has absconded.

“ WHEN interest ceases;” when the principal is doubled; and this concerns the second form of agreement abovementioned. “ After the time for payment has past;” in this case a term different from the period when interest ceases should be understood, by the same rule with the expression  
“ bring

“ bring the kine and oxen.”\* The construction of the phrase is, the creditor shall be owner of the pledge.

“ BEFORE ten days have elapsed;” does not this concern the case, where it is agreed, “ if I do not redeem the pledge within ten days after the principal is doubled, it shall become thy absolute property ?” This should not be affirmed ; for it would be inconsistent with practice. When no such agreement is made, the interval of ten days is nevertheless required ; and that would be inapplicable, when the term was past. Such is the mode of interpretation consistent with the gloss of the *Retnâcara*.

THE interval of ten days, ordained by VRIHASPATI, must be understood of a debtor, who resides at home. But, if he do not, VYĀSA propounds the rule (CXVI). “ Gold being doubled,” has the same import with the expression “ when interest ceases.” “ The stipulated period being expired ;” when a term has been fixed in regard to the pledge, and that term is past. It corresponds with the preceding text. The subsequent verse (CXVI 2) is intended for another distinction. “ The exact amount ;” that is, without interest.

*The Retnâcara.*

CONSEQUENTLY this concerns the fourth, eighth, and fifteenth forms of agreement.

HERE an observation should be made. If the debtor happen to have gone to a distant country, or be dead, and his son, or other heir, be not yet capable of business ; or if the debtor be a captive ; even in these and similar cases, no law ordains, that the property shall not vest in the creditor, when the term of the mortgage is expired. It can only become the property of the debtor or of his son, when the creditor, through tenderness, or at the intercession of others, restores it. But, when the agreement runs in this form, “ if I remain in my own country, and do not redeem the pledge, it shall

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\* Where one term is generic and the other specific.

become thy absolute property ;" then, should the debtor reside in a foreign country, he does not forfeit *the pawn*.

If the creditor reside in a foreign country, the mode of proceeding has been mentioned (CIV and CVI). But, if the chattel happen not to be appraised on that day, witnesses must be taken of the debtor's going to the creditor's house for the purpose of redeeming the pledge. To this proceeding there is no objection. If a dishonest creditor suffer the remaining days of the period to elapse, and his fraudulent practice be proved, and the debtor's going to the creditor for the purpose of redeeming the pledge be also substantiated, no loss is sustained by the debtor. Again, if the creditor and his family were then absent in a foreign country, but the debtor go to him on his return from abroad, we argue that there is no offence if the debtor afterwards go abroad. More would be superfluous.

UNDER the first, third, fifth, eighth, and eleventh forms of agreement, if the pledge be long unredeemed, may, or may not, the creditor hypothecate it to another, or sell it? In all forms of agreement, is a sale valid, which is made on the supposition of property in consequence of long enjoying the pledge?

### CXVII.

MENU:—If he take a beneficial pledge, he must have no other interest on the loan ; nor, after a great length of time, or *when the profits have amounted to the debt*, can he assign or sell such a pledge.

THE first hemistich has been expounded (XCI) as forbidding other interest, when the use and profit of a pledge has been settled as the only interest. The last hemistich determines the two questions proposed.

" AFTER a great length of time ;" when it has long remained " Assignment ;" in pledge to another. " Sale," an act divesting his own property. However long it have remained, a pledge received, and left in his possession after he has himself asked money *of th<sup>e</sup> d<sup>ist</sup>r*, must not be assigned *by th<sup>e</sup> creditor* in pledge to another person for a larger sum.

The *Retná'ara*.

' ASSIGNMENT

\* ASSIGNMENT in pledge to another ;' consequently, so long as the debtor's property subsists, a creditor must not assign, as a pawn to another for money borrowed, a chattel pledged by his debtor. This text is expounded in a similar manner in the *Méd'bātū'bi*, and by GO'VINDA RA'JA. VA'CHESPATI MIS'RA and BHAVADE'VA also concur in this interpretation.

\* AN act divesting his own property :' sale is a contract annulling the party's own property in his chattel after receiving a price ; but, in this definition, an act divesting his own property *simply* is expressed by the word sale : it consequently suggests a gift or absolute barter. The ox, pledged to, and possessed by, me, shall be this day employed in burden by you ; but to-morrow your ox shall be employed by me : such an exchange for one day is nevertheless unexceptionable. This *appears to be* meant in the *Retnācara*.

\* AFTER he has himself asked *money of the debtor* ;' when the creditor demands money of the debtor, but he, though required, pays not the money nor receives back his pledge ; then, if the creditor, impelled by poverty, attempt to assign that same pawn to another person for money borrowed, the text prevents him. But HELA'YUDHA explains "assignment" gift. In his opinion, the creditor may receive a loan from another person, assigning the pawned chattel in pledge to him. CULLU'CABHATTA also intimates, that the assignment of a pawn to another is unexceptionable, by adding, "for usage allows hypothecation of mortgaged land or the like to another person."

ON this interpretation, if the creditor contract a debt, assigning mortgaged land or the like to another, then, should he haply be unable to discharge his own debt, and the *original* debtor come to redeem his pledge, how should the matter be adjusted ? On this it is correctly said, if a pledge for custody be transferred as a pawn to another, and the debt be less than the former one, or equal to it, then, discharging his own debt with the money paid by the original debtor, and *thus* redeeming the pledge, he should restore it to the owner. But a pledge should not be transferred as a pawn for a greater debt : this is expressly stated in the *Retnācara* and other works ; "a pledge must not be assigned for a larger sum." It should also be considered as meant in the *Méd'bātū'bi*, and by GO'VINDA RA'JA.

If the pledge were for use, it should be transferred without any contradiction to the *ferre* agreement. For example; it should be assigned by the original creditor with a declaration in this form, "the pledge shall be used so long as I do not cause the original debtor to pay the principal sum *now borrowed*;" not in this form, "it should be enjoyed ten years or the like." Yet, if that be done by any careless person, let the pledge be lodged in the hands of the ultimate creditor with the consent of the first lender, along with a certificate of its value at the time, settled by an appraisement made and signed by five persons. But, in fact, should a creditor transfer a pledge, which he has received, on dissimilar terms, he shall be punished. In the the same mode should the decision be also argued in other cases. But the word "assignment" is properly expounded as signifying hypothecation; for, in certain cases, hypothecation is forbidden, and gift may be comprehended in the definition of sale. To include permanent barter, the word sale must be taken in a secondary sense.

*This text is founded on reason or immemorial usage.* If a creditor therefore, in breach of this law, transfer a pledge which he had taken, a moral offence is not imputed to him, but the chattel must necessarily be restored to the debtor when he offers to redeem it (CIV); if the last lender refuse to release the pledge, the original creditor may be put to much trouble, or sustain a loss; this should be understood. But the last creditor is only enabled to exact another pledge from the original lender, or payment of the principal and interest, not to refuse the release of the pledge. Should the creditor, in breach of this law, absolutely give it to any person, the gift is not valid; whence then should any benefit, arising from the gift, be even supposed? For he has no property in the pledge, since it has not been relinquished by the debtor; but its use alone has been conceded to him. "Who can benefit by giving away the property of another?" This text forbids a pretended gift. The sale of a pledge will be considered in the chapter on sale without ownership.

MORTGAGE land or the like should be carefully preserved by the creditor; it should not by any means be neglected. A debtor mortgages land for the debt contracted; the creditor uses it a few years, and afterwards another possessor

possesses it without any opposition from him. In such a case the debtor could not redeem the mortgaged land, which had been possessed for twenty years : for he is poor, but sees the land possessed by a stranger, yet asserts not his title, erroneously thinking his opposition improper because a stranger possesses it. Afterwards, when a law-suit is instituted, the possessor having acquired a title by undisturbed possession for twenty years, the land cannot be restored to the debtor offering to redeem the pledge, and the creditor must give other land as an equivalent. Therefore it should not be neglected. This some remark.

BUT others ask, why does not the debtor oppose *adverse possession* ? Since the pledge is lost by the fault of the debtor, an equivalent in land need not be given by the creditor. If the possessor, though verbally forbidden, do not refrain, what can the debtor say, when he applies to the king ? He may say, "this violent man possesses my land mortgaged to another ; if the occupant be not now restrained, he will, after long possession, assert a title, because he may have possessed it twenty years." The debtor's not applying to the king is therefore an evident fault ; why should the creditor give an equivalent for land lost by the debtor's fault ? But if the possessor, attending the court, affirm, that the pledgee gave him possession, and that plea do not then appear to be false ; in such a case indeed the pledge is lost by the fault of the creditor alone : it is therefore proper he should give an equivalent.

Others again hold, that the text of YA'JNYAWALKYA (CXIV) being equally applicable to a pledge received by another as to a pledge received by the possessor himself, no title to that land is gained by *adverse possession* for twenty years. On this account neglect has not been included in the text by the author of the *Retndcara* and the rest. The justness of these opinions should be examined under the head of title by long possession : more would be here superfluous.

THE term ( translated "assignment" ) may signify the nature of the thing. For example, a bracelet, an earring or the like, made of gold, should not, by exposure to the fire, be reduced to gold bullion *which is its natural form* : and the alteration of a pledge is forbidden by the word "and" *which bears the sense of "and the like."*

BUT hypothecation is not forbidden in all cases. For instance; one has contracted a debt, delivering a pledge on these terms, "the pledge may be used, so long as I do not pay the principal sum;" after a few years the creditor demands the debt from the debtor, but he is unable to discharge it; the creditor therefore assigns the pledge to another on similar terms, and borrows an equal sum. Such cases occur in practice.

THIS text (CXVII) according to CHANDĒSWARA, VA'CHESPATI, BHĀVADE'VA, and others, concerns a pledge for use or custody with no special agreement. But the author of the *Calpataru* says, it concerns a pledge to be used. This is mentioned on consideration of the chief intent of the text, but with no view of restricting it to pledges for use. CHANDĒSWARA so expounds the text. But the author of the *Mitidesara* holds, that it solely concerns pledges for use; this is only suitable on his interpretation.

contract, whether sale or gift, is valid. Hence the gloss, which supposes gift or sale by the debtor prohibited, is irrelevant. It should not be objected, how can gift or sale be valid, since, by stipulating a specific period, the owner has conceded his independence? Although he be not independent, his property subsists. Consequently, the efficient validity of sale or gift is uncontroverted, if it be said, as the debtor's property in the pledge was absolute, so shall be the buyer's or donee's: and authors have not stated as unfounded the text, "an unredeemed pledge shall neither be sold nor given away." Such is the mode of interpretation agreeable to the gloss of CHANDĒSWARA: VĀCHESPATI and BHAVADĒVA concur in the same exposition.

THE text of YĀJNYAWALKYA (CXII) concerns the case of an agreement in the second form, "if I do not redeem the pledge when the double sum has been realized, it shall become thy absolute property." The text of MENU, "nor, after a great length of time, can he assign or sell such a pledge" (CXVII), concerns the case of an agreement in the first form, where the clause, "it shall become thy absolute property," has not been inserted. No contradiction can be supposed between these two forms of agreement.

IN all agreements for a definite time, if the debtor wishes to redeem the pledge within the stipulated period by paying the principal and interest, VRĪHASPATI propounds the law for that case.

#### CXVIII.

VRĪHASPATI: \*—WHEN a house or field, mortgaged for use, has not been held to the close of its term, neither can the debtor obtain his property, nor the creditor obtain the debt.

2. AFTER the period is completed, the right of both to their respective property is ordained; but, even while it is unexpired, they may restore their property to each other by mutual consent.

"FOR use;" the seventh case has a causal sense. Consequently the mean-

\* THE first verse has been already cited and numbered CV.



ing is, a house or field, which has been mortgaged for use. " When that has not been held to the close of its term ;" when it has not reached the full term, neither can the creditor then recover the debt, nor the debtor obtain his mortgaged property. Consequently from this result, that, while the period is incomplete, the debtor shall not obtain his pledge, nor the creditor recover the debt, it follows, that the wish of recovering the pledge is ineffectual. After the period is completed, the right of both the creditor and debtor to the money lent and to the pledge respectively, that is, the free use of their own, is *in full force*. Consequently the creditor has a right to the money lent, and may use it as his own, at the full term ; and the debtor has the same right to the property mortgaged. Yet, even while the period is unexpired, if the creditor voluntarily accept payment of the debt and restore the pledge, or if the debtor freely discharge the debt to recover the pledge, the debtor's right to the pledge, and the creditor's right to the money lent, are immediately efficient. The sage declares it, " but even while it is unexpired &c." they may act by mutual consent ; may accept the debt, and receive back the pledge ; with the consent of the creditor the debtor may take his pledge, and with the consent of the debtor the lender may take his money. Consequently, while the period is unexpired, the debtor's wish to recover his pledge is *fruitless without the consent of the creditor ; and the creditor's wish to obtain the money, without the consent of the debtor : but with the consent of both parties, it is effectual*. Such is the interpretation according to the gloss delivered in the *Retnâcarâ*.

If the agreement run in this form, "take this land as a pledge, and lend me twenty *suvernas*," when should the pledge be redeemed? On this point it is said, such being the words uttered by the borrower, the lender must ask, "how long shall I use the pledge?" In answer to which the borrower specifies a term. When the debtor has been long in the habit of receiving and repaying loans of *the same creditor*, then, nothing being expressly declared, there is no tacit agreement in regard to the term, consequently this agreement falls within the forms above mentioned. Or, should it any how exceed that enumeration of forms, the pledge must be restored when the double sum has been received, for it is of course legally fit, that a pledge be restored after the double sum has been received.

UNDER the general law, that a pledge shall be used until the debt be repaid (CXI), is not the use of the pledge proper until the principal sum be discharged? No, from the coincidence of the text of CĀTYĀYANA v XXXVII 3, (where the use of a pledge for a loan made with an agreement, that the whole use and profit of the pledge shall be the only interest, is denominated interest from the use of the pledge, and which is also called interest by enjoyment) this text (CXI) must be referred to the same case. It should not be objected, that there is no argument for the restoration of a pledge, in such a case, after the double sum has been realized. The text of YAJÑAWALKYA (XLVI) is authority for such an induction. Nor should it be objected, that this contradicts the text of VISHNU (CX). That text is limited to immoveable property. Nor should it be asserted, that the word "immoveable" is merely illustrative of a general sense. There is no proof to support such an assertion, nor any grounds for restricting the text of YAJÑAWALKYA. A pledge unlimited as to time must therefore be released when the double sum has been realized, provided it consist of moveable property; but immoveable property, under the authority of the law, may be used so long as the principal remain undischarged. Even though it be not then redeemed, the debtor does not forfeit his property in the pledge, for the text (CXII) concerns the case of an agreement containing a clause to this effect, "it shall become thy absolute property. But, if the debt be contracted on a pledge given for confidence only, without such a special agreement, the debt should be recovered by the same mode of recovery as ordained for debts unsecured by a pledge

A PLEDGE, delivered by the pledgor to give confidence to the lender, must be carefully preserved by the creditor, and be restored on receipt of the whole sum due.

The *Retnācara*.

CONSEQUENTLY, in the case of a pledge to be used, since the creditor may derive benefit from the use of it, he has no solicitude in regard to the payment of the money. But, in the case of a pledge to be kept only, the creditor derives no benefit from the pledge, on the contrary, he has the trouble of keeping another's property, he may therefore be anxious to recover his money but, since there is no other mode, he must adopt one of the five modes of recovery, that which is consonant to moral duty, suit in court, legal deceit, lawful confinement, or violent compulsion and, in such a case, the time for recovering the debt is that, which was stipulated by the borrower for the payment of the debt; or, if none were stipulated, the period when the debt is doubled, for that is prescribed by law as the time for redeeming a pledge. This is consistent with reason and this mode of proceeding, say some lawyers, supposes a case where the use of the pledge has been forbidden, or it supposes the case of a pledge consisting of masses of iron and the like.

BUT, if the debtor be absent, having absconded or the like, from whom shall the creditor recover his money? A text of law, cited in the *Retnācara*, provides for this case.

### CXIX

*Smṛiti*. — AFTER giving notice to the debtor's family, a pledge for custody may be used when the principal is doubled, and so may a pledge for a limited period, when that period is expired.

WHEN the principal is doubled, a pledge for custody may be used after giving notice to the debtor's family in this form, " Having borrowed money  
" from me, but not having yet redeemed the pledge the debtor has absented  
" himself, and the principal has been now doubled by the interest, thou art  
" his heir; I therefore give thee notice as required by law, that henceforth  
" the

" the pledge will be used by me." The sage's meaning is this ; if the debtor's heir himself pay the debt to the creditor, and take the pledge, or if he say, " wait a few days, I shall send information to the debtor," the pledge must not be then used. But, if the heir do not redeem the pledge, nor give information *to the debtor*, then, taking the attestation of several persons, the creditor may use the pledge.

" A PLEDGE for a limited period ;" a pledge, for which a specifick period has been fixed, may be used after that period has expired, notice being first given to the debtor's family. Such is the sense of the text.

THE use of a pledge delivered for use may be renewed: if it be agreed, " the pledge shall be enjoyed for two years ; afterwards, paying the debt, I will redeem this pledge delivered for use ; the use of the pledge shall cease at the close of that period ;" in such a case, if the debtor, happening to go to another country, be absent, and the debt be not paid, nor the pledge redeemed then the use of the pledge is authorized after notice given to the debtor's family. What is said by the author of the *Retnâcara*, ( ' this authorizes the use of a pledge delivered for use without, however, conveying the absolute property, if no period were stipulated' ), intends generally any moveable pledge for use under such circumstances. But immoveable property, being pledged for use, must only be relinquished, if it were agreed, " I will restore it when the principal is doubled or the like ;" for, since it cannot move to another place, there can be no apprehension of its being seized by another person. But moveable property must be preserved with the utmost care until it be restored to the debtor.

In the present case, after notice given to the debtor's family, the use of the pledge is to be taken as wages *for the care of it*. This is intended by the text. Here " the debtor's family " is merely an instance of a general injunction : therefore, if the debtor himself be present, but procrastinate the redemption of the pledge, it is reasonable, that the creditor should use it after giving him notice : and this may be equally affirmed of pledges for custody and pledges for use ; it should be so argued, if the agreement be in the sixth or other similar form above stated, and sometimes also in other cases.

It appears from the term " may be used," and from the gloss, " this authorizes the use of a pledge without, however, conveying the absolute property, that the creditor shall only use the pledge he has no property therein. Consequently although the creditor use the pledge, it must be restored to the debtor returning after the lapse of several years. Such is the sense of the law

In such a case, shall the principal sum be received by the creditor with the whole interest? To this question the answer is, it appears from the conditions in the text of VRĪHASPATI ( XCII ) " before interest cease on the loan or before the stipulated period expire, ' that there is no forfeiture of interest in consequence of using a pledge for custody after the period has elapsed or the like. But, in the case of clothes and similar things, since they would be totally spoiled by use, it is reasonable, that the principal and interest should be forfeited in consequence of using them

BUT, if the debtor die or abscond and notice cannot be given to his family, what is to be done? A text quoted in the *Retnacara* provides for that case

### CXY

*Smṛiti* : — If the debtor be missing or dead, let the creditor produce the writing in a court of justice, and obtain a certificate from the court, specifying the period which it bore.

LET the creditor produce the writing in the king's court and there obtain a document specifying the term which it bore, let him then obtain a certificate. A creditor, using a pledge after such *pre action*, commits no offence

The *Retracara*

THE meaning is this, when a debtor is missing or has absconded, the pledge may be used after notice given to the debtor's family, as ordained by the preceding text but, if notice cannot be given to his family, then, producing the writing in the king's court, let the creditor obtain a certificate

43

If

If the debtor be dead, the pledge may be used after notice given to the debtor's family, as is signified in the preceding text; yet, if notice cannot be given to the debtor's family, but heirs of the debtor exist in some *other* country, let the creditor produce the writing in the king's court and obtain a certificate. Such is the sense of the text.

THE certificate is delivered by the king conditionally; it should express, "until the debtor or his heir attend, the pledge shall remain with thee, and shall be used by thee." "A certificate from the court;" a writing certifying the continuance of the pledged property with the creditor. That the pledge shall be used, appears from the expression in the *Retnācara*, "a creditor using a pledge after such *precaution* commits no offence." But if neither the debtor, nor his heir, be *living*, the mode of proceeding in that case will be subsequently mentioned from a text of *CAṬYĀYANA*.

## CXXI.

VRĪHASPATI, cited by MISRA and BHAVADEVA under the title of recovery of debts:—WHEN the debt is doubled by the interest, and the debtor is either dead or has absconded, the creditor may attach his *pledge or the debtor's* chattel and sell it before witnesses:

2. Or having appraised it in an assembly of good men, he may keep it ten days; after which, having received the amount of his debt, he must relinquish the balance, *if there be any*:
3. Having ascertained his own demand by the help of men skilled in arithmetick, and taken the attestation of witnesses, he commits no offence by thus recovering it.

THESE texts are also cited in the *Retnācara*, but the reading is *tād bandhujnyātrīviditam* instead of *taddhanam jnyātrīviditam*; and it is expounded, "notice having been given for the assurance of the debtor's relations." \*

\* See a further comment on these texts after v. CCXCI.

CĀTYĀYANA:—WHEN the pawner is missing, let the creditor produce his pledge before the king; it may be then sold, with his permission: this is a settled rule:

2. Receiving the principal with interest, he must deposit the surplus with the king.

If the value of the pledge exceed the amount of principal and interest, what should be done? The sage declares, he should take the amount of his debt and no more. What shall be done with the surplus? The sage declares, "he must relinquish the balance, he must deliver it to the heir or to the king. The text is so expounded by BHAVADEVĀ.

"*Jnyatrīviditam* (according to one reading of the text), known to witnesses," having taken the attestation of witnesses. Consequently the taking of a pledge in payment of a debt should be attested as well as the sale of it. "He commits no offence," VACHESPATI expounds the word in the neuter sense a creditor, recovering his debt even by compulsion or the like, shall not be punished by the king.

### CXXIII

YAJNYAWALKYA — OR, even in the absence of the debtor, the creditor may sell the pledge before witnesses.

If the debtor or pawner be not *present*, then, selling the pledge, and taking the amount of the debt, the creditor should deliver the surplus to the heir or to the king.

The *Dīpācalicā*.

THE meaning is this, if the debtor live in another country, or happen not to be present, the creditor should deliver the balance of the price to the debtor's son, brother, or the like, before witnesses, that the debtor may receive it when he returns. This appears from the gloss of BHAVADEVĀ and of the *Dīpācalicā*. As a debtor, if the creditor be absent, deposits the amount of the debt with his son or other heir, so the creditor, if the debtor be absent, deposits the balance of the price obtained for the pledge with his son or other heir. This also is founded on the gloss of BHAVADEVĀ and of the author of the *Dīpācalicā*. If there be no heirs, or if they be absent, or if they refuse to receive it, he should deliver it to the king (CXXII).

"WHEN the pawner is missing (CXXII), when he cannot be found, being



being dead, having absconded, or having gone to a distant province; the debt being doubled by the interest, let the creditor apply to the king, and also produce the writing: this must be understood. "With his permission;" with the king's consent to the sale, the pledge may be then sold: the text must be so supplied. After which, taking no more than the principal and interest of the debt, from the price for which the pledge is sold, let him deliver the balance to the king. This distinction occurs; if the debtor be actually living in another country, it is merely intrusted to the heir or to the king; but, if he be dead, the creditor should give it to the heir, or, on failure of heirs, to the king. This is reasonable; a debtor, having delivered a pledge to a creditor, has property in the pledged chattel so long as he lives; afterwards, his property being devested by death, property vests in his heir; it is therefore proper to give his chattel to him. On failure of heirs, property vests in the king; but under the rule of VISHNU (Book V, v. CCCCXVII) the failure of heirs signifies the failure of fellow students. Accordingly CHANDÉSWARA, in expounding the text of CĀTYĀYANA (CXXII), delivers this gloss, "when the pawnier is not living, nor any person entitled to inherit from him." But the *escheated* pledge of a *Brahmana* must be given to learned men or to priests, under the text of DĒVALA (Book V, v. CCCCXLV). All this will be discussed under the title of inheritance.

## CXXIV.

YĀJNYAWALCYA:—A DEBTOR shall be compelled to pay, with interest, a debt contracted on the pledge of religious merit; and he shall be compelled to repay two fold a debt contracted on a chattel of small value delivered with a solemn asseveration.

"RELIGIOUS merit;" the use of sacrificial fire, ablutions in the Ganges, and the like: what is received on such a pledge, must be repaid with interest. What has been lent on a pawn of small value, delivered with a solemn asseveration, in this form, "it shall certainly be redeemed by me," must be repaid two fold, if the debt remain long due; the pledge shall not be sold by the pledgee.

It is noticed in the *Dīpaśāhī*, that the text is read in the *Viśvarūpa*,  
 "charitra"

"*charitra*" instead of "*cláritra*." The commentator's opinion is this; *charitra* signifies act or practice; *cláritra* has the same signification; the meaning therefore is, what is borrowed on the pledge of ablutions in the Ganges or the like.

ABLUTIONS in the Ganges, and other religious acts, are pledged, when the debtor, on contracting the debt, says, "until I repay thy loan I will not bathe in the Ganges." The term, "use of sacrificial fire," relates to the voluntary use of it on *special occasions*, not the continual use of it *by those, who maintain a perpetual fire*. Here ablutions in the Ganges and the like constitute a beneficial pledge to be kept only, not a pledge to be used; since the debt therefore is not discharged by the use of it, how shall it be discharged? The sage therefore ordains, that he (the king) shall compel the debtor to pay the debt with interest. The meaning consequently is, that payment shall be enforced by the king.

CHANDÉSWARA delivers a similar gloss, but he reads the text (*as in the Dīpalcikā*) *charitra bandhaca cītam*, and expounds it; "for, if ablutions in the Ganges be not performed, the king shall compel the debtor to pay the debt with interest."

"WHEN ablutions are not performed;" they are hypothecated, and therefore not performed. We explain *charitra*, ablutions in the Ganges and the like; *cláritra*, the benefit arising from such *ablutions*. When that is pledged "the debtor shall be compelled &c.;" for instance, when a debt is contracted with an agreement in this form, "if I do not repay thy loan, the benefit of my ablutions in the Ganges shall accrue to thee." But this can only be a pledge for custody, for it would be lost to the debtor were it enjoyed by the creditor; the debt must therefore be discharged as in the case of pledges for custody: the pledge is not forfeited. The author of the *Mitácsharā* delivers a similar exposition.

"A PAWN of small value;" a pledge, of which the value does not exceed twice the amount of the debt. This half of the text (CXXIV) restrains a creditor, who might attempt to sell the pledge on this reflection; "twice the  
amount

amount of the debt is receivable by me, what objection therefore can the debtor have to the sale of this pledge ? The meaning is, since no agreement was made, when the debt was contracted, to authorize a sale, how should the pledge be sold ? This must be understood when the pledge is not redeemed after the principal is doubled. However, there is no offence in a sale made, after application to the king, with the king's permission.

We hold, that, when no pledge is delivered by the debtor, but he solemnly promises, at the time of receiving the loan, " I will assuredly repay thee thy loan, " his conscientiousness is in reality his surety. In that case, on proof of the debt, he shall be compelled by the king to pay twice the amount. To enlarge on this subject would be superfluous.

On this text the author of the *Mitacshari* thus comments, " a pledge by the act of the parties is *claritra bandhaca*. Consequently, when a pledge of greater or less value is taken with the free consent of the debtor or creditor, the double sum only shall in that case be received by the creditor, that is, the pledge shall not be forfeited. At the period when the principal is doubled, the double sum only shall be paid, there shall be no forfeiture of the pledge. In the case of earnest also, there is no forfeiture of a pledge. This is only suitable on his interpretation. He expounds the terms of the text otherwise (" earnest delivered, instead of " solemn asseveration ), this other subject is incidentally introduced under the title of pledges. He adds when the merchant, who buys a commodity, giving earnest to the merchant who sells it, concludes a bargain for the purchase of goods amounting to a thousand *rudras*, if the buyer break the agreement, *the earnest* shall be forfeited, if the seller break the agreement, it shall be repaid two fold.

## SECTION III.

## ON THE VALIDITY OF HYPOTHECATION AND MORTGAGE.

## CXXV

VRĀSA:—PLEDGES are declared to be of two sorts, immoveable and moveable, both are valid when there is actual enjoyment, and not otherwise.

AND this concerns a pledge delivered for use

## CXXVI

VRĪHASPATI —Of him, who does not enjoy a pledge, nor possess it, nor claim it *on evidence*, the written contract *for that pledge* is nugatory, *like a bond* when the debtor and witnesses have deceased.

HERE *terms of comparison*, as and so, must be assumed “ When the debtor and witnesses have deceased,” when neither the debtor nor the witnesses exist Hence, as a writing executed by the debtor and attested by witnesses is nugatory unless the debtor or witnesses be living, so of him, who enjoys not a pledge, nor makes it his own, nor shows to others that the pledge was actually received, the writing, though complete, is no evidence so far as concerns the pledge

The *Retnacara*

EVEN after the death of the witnesses and debtor, if the creditor actually enjoy the pledge, that pledge is valid, how can it be asserted, that the writing is nugatory? To this it is answered, some person comes and makes a demand upon another in these words, “ thy father is my debtor, inspect “ this bond, all those, who witnessed it, are dead, and thy father also is “ dead,” as in this case, so, if there be no other proof of a pledge, a mere writing is nugatory because it is unavailing That is mentioned by way of example. Or *it may be thus explained*, if a chattel belonging to  
some

some person have been enjoyed for a few days *only* by another, or be contested, and the possessor, sued by the owner before the king, allege, " his father received a loan from me, and the bond is forthcoming," then, if the witnesses be dead, the writing is nugatory, even though there be actual occupancy. Such being the case, there is no difficulty in explaining the text without assuming the terms of comparison as and so; for the sense would be, he, who does not actually possess nor enjoy the pledge, may not claim it; and a writing is nugatory when the witnesses and debtor are deceased and in this case undisputed possession, and a term fixed for the restoration of the pledge, must be understood. It may therefore be affirmed, that, when possession has been interrupted, but witnesses are living, the pledge is valid; yet, in the case of uninterrupted possession, the pledge is valid even though the witnesses be dead.

' Nor shows to others &c ' to others besides those named in the writing, that is, for the purpose of evidence. Consequently the affirmation of it to another should only be made in the presence of the defendant. Or " claim " may signify sue before the king. The writing, though complete, is no evidence even though correctly drawn in the form already described, with all its conditions, " first inserting the lender's name and so forth " Hence a writing in this or other similar forms, " I borrow one hundred *suvernas* from DEVADATTA," is certainly unavailing.

" It is no evidence so far as concerns the pledge," it follows that the writing may be good evidence so far as concerns the debt. Consequently the sense is this, if there be a writing, payment of the debt proved by that writing shall be enforced, but without *actual* occupancy, a pledge, though proved by that writing, shall not be obtained. Why does he not actually enjoy or occupy it? Has it been restored on receipt of another pledge, or has it been released on a solemn promise of payment or the like? Or the sense may be this, if the loan have been actually received from the creditor by the debtor, for what fault should the creditor lose it? But a pledge long unenjoyed cannot be seized. As a man's own effects, being neglected by him and long possessed by a stranger, become the absolute property of the possessor, surely if a pledge, which is the property of another, be not possessed by the

the pledgee, it is the absolute property of the owner who does possess it.

WHAT then is suggested by the word "claim?" for those, to whom the claim is shown, become witnesses only; but, if the thing be unpossessed through neglect, of what use are witnesses? The answer is, he should fully show in an assembly of people the reason why he has not possession. For instance, "executing a mortgage deed to me, he has received a loan, why does he not deliver the pledge?" Such a dispute is supposed. But, if a contest do subsist, as possession is not *then* valid *without proof of right*, neither is an unenjoyed pledge valid. This is one case. "This ornament is pledged to me; but his daughter's nuptials will be celebrated two months hence; his wife may wear it for that period, afterwards it must be delivered to me." This is another case. On these and similar occasions, if the recorded witnesses be alive, they can depose these circumstances. There is not consequently any contradiction between the first and last case.

HERE the expression "does not enjoy" concerns a pledge for use; "nor possesses" concerns a pledge for custody; "nor claim" concerns both.

The *Retnâcara*.

BUT this text does not concern a pledge for custody consisting of ablutions in the Ganges or other observances producing religious purity; for it is not applicable *to such pledges*.

AND this is nearly *but not strictly true*; for a pledge whether for use or custody may be confirmed, although it be not ascertained whether it have been actually possessed or not.

The *Retnâcara*.

THIS meaning is intimated; although he have not himself shown his claim to other men, yet if they know *and depose* the whole circumstances, even in that case also the pledge is confirmed.

some person have been enjoyed for a few days *only* by another, or be contested, and the possessor, sued by the owner before the king, allege, " his father received a loan from me, and the bond is forthcoming ;" then, if the witnesses be dead, the writing is nugatory, even though there be actual occupancy. Such being the case, there is no difficulty in explaining the text without assuming *the terms of comparison* as and so ; for the sense would be, he, who does not actually *possess nor* enjoy the pledge, may not claim it ; and a writing is nugatory when the witnesses and debtor are deceased : and in this case undisputed possession, and a term *fixed* for the restoration of the pledge, must be understood. It may therefore be affirmed, that, when possession has been interrupted, but witnesses are living, the pledge is valid ; yet, in the case of uninterrupted possession, the pledge is valid even though the witnesses be dead.

' Nor shows to others &c.' to others besides those named in the writing, that is, for the purpose of evidence. Consequently the affirmation of it to another should only be made in the presence of the defendant. Or " claim " may signify sue before the king. The writing, though complete, is no evidence, even though correctly drawn in the form already described, with all its conditions, " first inserting the lender's name and so forth." Hence a writing in this or other similar forms, " I borrow one hundred *suvernas* from DEVADATTA," is certainly unavailing.

55

" IT is no evidence so far as concerns the pledge ;" it follows that the writing may be good evidence so far as concerns the debt. Consequently the sense is this ; if there be a writing, payment of the debt proved by that writing shall be enforced ; but without *actual* occupancy, a pledge, though proved by that writing, shall not be obtained. Why does he not actually enjoy or occupy it ? Has it been restored on receipt of another pledge, or has it been released on a solemn promise of payment or the like ? Or the sense may be this ; if the loan have been actually received from the creditor by the debtor, for what fault should the creditor lose it ? But a pledge long unenjoyed cannot be seized. As a man's own effects, being neglected by him and long possessed by a stranger, become the absolute property of the possessor, surely if a pledge, which is the property of another, be not possessed by the

the pledger, it is the absolute property of the owner who does possess it.

WHAT then is suggested by the word "claim?" for those, to whom the claim is shown, become witnesses only; but, if the thing be unpossessed through neglect, of what use are witnesses? The answer is, he should fully show in an assembly of people the reason why he has not possession. For instance, "executing a mortgage deed to me, he has received a loan, why does he not deliver the pledge?" Such a dispute is supposed. But, if a contest do subsist, as possession is not *then* valid *without proof of right*, neither is an unenjoyed pledge valid. This is one case. "This ornament is pledged to me; but his daughter's nuptials will be celebrated two months hence; his wife may wear it for that period, afterwards it must be delivered to me." This is another case. On these and similar occasions, if the recorded witnesses be alive, they can depose these circumstances. There is not consequently any contradiction between the first and last case.

HERE the expression "does not enjoy" concerns a pledge for use; "nor possess" concerns a pledge for custody; "nor claim" concerns both.

The *Retnâcara*.

BUT this text does not concern a pledge for custody consisting of ablutions in the Ganges or other observances producing religious purity; for it is not applicable *to such pledges*.

AND this is nearly *but not strictly true*; for a pledge whether for use or custody may be confirmed, although it be not ascertained whether it have been actually possessed or not.

The *Retnâcara*.

THIS meaning is intimated; although he have not himself shown his claim to other men, yet if they know *and depose* the whole circumstances, even in that case also the pledge is confirmed.



A TEXT of law, cited in the *Retnâcara*, expressly declares the nullity of a pledge in a case of neglect

## CXXVII.

*Smṛiti* — A HOUSE, a reservoir of water, a market place, grain, women, beasts of burden and the like, are destroyed or spoiled by neglect.

“ A MARKET place,” a place where commodities are sold

The *Retnâcara*

“ WATER,” preserved for his own use “ A reservoir of water,” a well or the like “ Beasts of burden ” are expressed in the plural number to signify “ and the like ” Consequently a garden, a field and the like are comprehended by the text, in short, all kinds of pledges are destroyed by neglect If the pledgee neglect it, a house is destroyed or spoiled for want of thatching, a well or the like, for want of extracting earth by which it is choked, a market, for want of concourse of buyers and sellers through fear of ill disposed persons, grain, by robbery or the like, cattle, women and beasts of burden, for want of food or care so in other instances according to the circumstances of each case “ They are destroyed,” and utterly lost, or they remain, but are spoiled and become unfit for use. By this mention of things destroyed or spoiled, neglect is shown blamable, and it is a fault on the part of the creditor. Consequently, if the pawner preserve them, they would be possessed by the debtor but, if he do not preserve them, they are lost, and why should another pledge be delivered to the creditor? The debt therefore remains unsecured by a pledge

CHANDĒSWARA remarks, “ when mortgaged houses, and the rest, are destroyed or spoiled by the fault of the pledgee the mortgage is annulled It is therefore implied, that another pawn shall not be given by the pawner in consequence of the pawnee’s fault ” It is consequently evident, that the same opinion has been entertained by CHANDĒSWARA

“ BY the actual possession of a pledge the validity of the mortgage is maintained”

*gained*" (XCVI). The sense is, by actual possession only of a pledge is the validity of the contract *maintained*; for the text coincides with those of VYĀSA and VRĪHASPATI. Consequently, if it be neglected, there is no possession of the pledge, as already explained. Hence, if a creditor, having lost one pledge, demand another; or if he attempt to seize a pledge saved by the debtor, who interfered when loss impended through *the creditor's* neglect; in such cases the creditor shall not obtain the pledge. So much is declared. Yet, if the creditor did not neglect the pledge, but it be spoiled by the act of God, another pledge should be delivered. This the sage declares; "if it be spoiled, though carefully kept &c." (XCVI). Spoiled is there illustrative of detriment.

## CXXVIII.

CĀTYĀYANA:—SHOULD a man hypothecate the same thing to two creditors, what must be decided? The first hypothecation shall be established; and the debtor shall be punished as for theft.

"DECIDED;" ruled.

The *Retnācara*.

CONSEQUENTLY the last hypothecation is not valid: and this supposes, that both mortgagees have obtained possession; if either or both have not obtained possession, the hypothecation to him, who obtains not possession, is invalid as abovementioned. Both may have obtained possession of the same thing: for instance, one has had possession for a few days; afterwards the other, disseizing him by force or fraud, possesses the thing a few days. Again; the thing is possessed by one through force or the like, but the other disseizes him; in this case, the attempt to take possession on the part of him, who disseizes the other, is well argued to be *a sufficient act of occupancy*: where neglect is declared a cause of invalidating the mortgage, there, if the claimant long attempting, but not obtaining, possession, has been content, it is *considered as neglect*.

"THE debtor shall be punished as for theft;" for pledging the same thing

thing to two persons, the pledgeor shall be punished as for theft VISHNU  
expressly declares it. ~~~~~

## CXXIX.

VISHNU.—HE, who has mortgaged even a bull's hide of land to one creditor, and, without having redeemed it, mortgages it to another, shall be corporally punished by *whipping or imprisonment*, if the quantity be less, he shall pay a fine of sixteen *suvernas*.

“EVEN a bull's hide of land,” land to the quantity of a bull's hide. The definition of a bull's hide will be cited further on. If he *twice* mortgage a less quantity than that, he shall be fined in sixteen *suvernas*. On a cursory view there seems disparity in the punishments by corporal chastisement, and by a fine of sixteen *suvernas*. This it would be proper to examine under the title of fines, *it must be here unnoticed*, for what would avail a misplaced discussion vainly swelling the book?

THE last hypothecation is invalid, according to MISRA, BHAVADĒVA and others, herein the *Retnacara*, *Paryata*, *Smṛiti śara* and other works concur. Punishment only is shown by the text of VISHNU, the invalidity of the last hypothecation is inferred as a consequence. If the last hypothecation were valid, the first would be certainly void, for one contract must avoid—consequently the words “without having redeemed it” are pertinent. The first mortgage therefore, not being redeemed, is valid, and hence it follows, that the last mortgage is void. But some think the validity of the last hypothecation implied in the punishment of the debtor. This and other *deviations* are liable to objection.

THE text concerns land alone

BHAVADĒVA.

MISRA and BHAVADĒVA read “land exceeding *the* quantity of a bull's hide only.” MISRA remarks, that the sale of it without ownership is prevented. VISHNU explains the quantity of a bull's hide.

## CXXX.

VISHNU:—THAT land, whether little or much, on the produce of which one man can subsist for a year, is called the quantity of a bull's hide.

“ LITTLE or much ;” if the land be excellent and very productive, one man may subsist for a year on the produce of a small quantity of land, and the value of that land is great : but if its produce be small, a greater quantity of land is *requisite for such maintenance of one man*. Consequently the value of such less quantity of *fertile* land, and greater quantity of land *not fertile*, is the same. They are equal in value, and the punishment should be determined by the value of the land.

## CXXXI.

*Smṛiti*, cited in the *Retnācāra*:—If two men, to whom the same property has been pledged, enter into a contest, to him, who has possessed the land, it shall belong, if no force were used.

THE construction is, “ who has possessed the land without using force.” The text must be supplied, “ that land shall belong to him.

*The Retnācāra.*

In the same property have been mortgaged to two persons, and the pledge have been given to one before the other, but one has possession and the other has not possession, the pledge belongs to him only who has possession, not to him who has not possession even though he be the first mortgagee ; for a pledge is invalid without possession as has been already stated. Ultimately this text bears the same import ; but there is no vain repetition, since both texts were not delivered by the same legislator, VR ĪSHASPATI.

favour of one party, be equal, a decision may be grounded on unseen argument, or *due consideration of the credibility of the evidence*. When therefore the priority of mortgage and possession is doubtful, a decision should be formed on consideration of *circumstances*. If the rights of both be on any account undistinguishable, equal shares shall be assigned and this is almost expressly declared. Such is MĪSTRĪ's meaning. BHAVANDEVA concurs in that opinion and it is reasonable, for suits should be decided by the king with due consideration of the course of things. But that is a remote affair which cannot be ascertained by the king, sages have therefore delivered a rule of decision. Yet, if any one can ascertain the matter through investigation guided by profound justice, why should recourse be had to equal participation or the like?

"In the case of a gift," if one thing be given to two persons, the same rule of decision, according to actual possession, is declared in that case also by a text which will be quoted (*"even in immoveable property a title is gained by long possession, and lost by silent neglect"*) \*. The same decision should also be given in the case of a sale, for there is no difference in the divestiture of property by gift or sale. But, when the same thing has been sold to two persons, and, priority of time being proved, one of them is entitled to the thing, and the other not entitled to it, he, who does not obtain the commodity sold, shall recover the price from the seller. If both are entitled to receive shares of the commodity sold, half the price paid by him and half the commodity shall be the share of one, and the other half of the commodity with half the price shall be the share of the other. This should be considered as the rule of decision.

If both equally have, or have not, possessed the thing, and there have been no neglect on either part, and the priority of mortgage be doubtful, a text of law, cited in the *Retnācira*, propounds a decision on the disparity of written and verbal evidence.

#### CXXXIV

*Smṛiti* †—If a pledge, a sale, or a gift of the same thing be

\* Attributed to VAĪSHAMPATI. See Book V, v. CCCLXXXIV

† Attributed to VAĪSHAMPATI

*alleged to be made before witnesses to one man, and by a written instrument to another, the writing shall prevail over the oral testimony, because one contract only is maintained.*

IF one contract be attested by witnesses and the other be authenticated by an attested writing, the attested writing shall prevail; that is, it shall establish the mortgage. “ Because one contract only is maintained;” because the contract with one man only is maintained by the writing produced.

*The Retnâcara.*

CONSEQUENTLY the joint evidence of a writing and witnesses is exclusive, and verbal evidence singly must be excluded, because one contract only is maintained in consequence of the writing produced. A pledge has been given before witnesses to one man, and with a written instrument to another, but both have possessed the thing; after a few days a contest arising thereon, the pledge authenticated by a writing is alone valid. The text (CXXXIV) is considered in the *Retnâcara* as conveying that sense. Again; the owner has delivered a pledge to one man with an instrument in his own handwriting, unattested but not extorted by force, and to another before witnesses; even there also the writing shall prevail. The reason of it is, that the depositions of witnesses may possibly be false.

prevail ; that is, it shall establish the mortgage. Such is HPLĀYUDHA's meaning. and that should be considered as admitted in the *Retnācara*, as has been already stated more than once.

A PLEDGE is only lost under the text, " a house and the rest are destroyed by neglect &c. (CXXVII). Forfeiture of property by silent neglect occurs in cases of gift and the like. So in the present case also, the pledgee is prevented from obtaining possession in consequence only of his silent neglect. Else, we think, a gift made for the benefit of the donee under the text concerning gifts, " in his mind intending the donee, let him cast water on the ground," would be void, if the donee, through ignorance, did not immediately take possession.

THIS must be understood of two contracts of the same nature. But for contracts of various natures opposed to each other, the rule of decision will be delivered under the title of relative force of contracts.

If neither party have decisive possession, and no neglect be imputable to either party, but both have writings, and those writings be attested, the following texts of law, cited in the *Retnācara*, propound a special decision.

#### CXXXV.

*Smṛiti* : \*—BUT, if a man first mortgage land without noticing all *circumstances*, and afterwards mortgage it with express description by name *and the like*, that writing, which contains an express distinction, shall prevail.

2. IF a field or a house be described in a written instrument by its limits, and if villages and the like be *so* described, the contract is valid.

3. WHEN a distinction is expressed in a writing to one man, and no distinction to another, the express distinction, says CĀTYĀYANA, shall preponderate.

IN the first text it is ordained, that, if a writing be delivered to the first creditor in this form, " I mortgage so much land to thee, and receive a loan of a hundred *śūvernas*," and if it be mortgaged to the last creditor by a writing in the form directed by YAJNYAWALCYA as abovementioned. inserting the name of the lender and of the borrower and so forth, then the mortgage is valid in favour of the last creditor

THE sense of the second text is this, if a written instrument, specifying the limits, be delivered to one man in this form, " this field measured by four hundred cubits, and extending east and west from such a pond to such a mango tree, and north and south from the land of such a person to such a river, is mortgaged to you;" and if it be mortgaged to another by a writing in this form, " this field is mortgaged to you," the field conveyed by the instrument, which specifies the limits, acquires validity, that is, it becomes a valid pledge and so of a house, a village, or the like Or " villages and the like" may be thus expounded the creditor's village, the village, in which the creditor resides, occupying a dwelling house, land and the like, that, in which the debtor resides, and that, in which the field is situated if those villages be described Under the words " and the like" are comprehended the names of fathers and so forth, as directed by YAJNYAWALCYA, and all other particulars of place and the like as required by local usage.

By the third text this meaning is denoted to one man the mortgager delivers a written instrument in this form, " the land situated in such a village, "extending from such a boundary to such a boundary, and belonging to " me YAJNYADATTA, is mortgaged to thee DEVADATTA;" to another he mortgages land in another form, " this is addressed to CHAITRA, the " field belonging to me YAJNYADATTA, situated in such a village, extending from such a boundary to such a boundary, and which was obtained by " favour of the king in consequence of great services rendered to him, is " mortgaged to thee," a distinction being thus expressed, that is, the land being thus particularly described, the writing which contains an express distinction, specifying the land obtained by favour of the king, shall preponderate



ponderate; resisting the other mortgage, it shall maintain the mortgage it conveys. Or the third text may be considered as intended to enforce the sense of the former texts.

FROM the expression "preponderate" it follows, that the other is not preferable. Consequently, when there is no contradiction, but one instrument only expresses the name, boundaries and other distinctions, the other instrument is sufficient evidence, if the limits and other particulars can be ascertained in any other mode. This is also admitted by CHANDÉSWARA, for he delivers this gloss, "under these texts, if the mortgage be made to one man in a general form, and the same thing described by name be mortgaged to another; then, if the contracts be incompatible, that, which expresses a name and other distinctions, shall prevail." If such were not his meaning, he would not have added "if the contracts be incompatible;" he would have only said, the mortgage not described by name and other distinctions shall not prevail. This we hold reasonable.

OCCUPANCY prevails over verbal and written evidence; but, if possession be equal, the decision must be argued from the disparity of the writings. If these also be equal, participation is reasonable. No one has directed a decision on the disparity of verbal evidence. In support of these opinions it is proper to adduce the text above cited (CXXXIII).

ALL this is enjoined, *but not inflexibly*. Through ignorance or the like, the writing has been delivered to the first creditor in some *irregular form*, and he has not silently neglected the pledge; if all the circumstances be fully ascertained by the king or arbitrators, from the evidence of neighbours, and if a writing in due form agreeable to law and usage were delivered to the last creditor, still it is argued by such men as we are, that the hypothecation to the first creditor is valid; for these texts of sages are rules of civil law. Accordingly after citing the text (CXXXIII), MISRA adds, this is enjoined, *but admits exceptions*.

If a mortgage deed, *irregularly drawn* by a person inexperienced in such affairs, should happen not to be otherwise proved authentick.

the mortgage deed in favour of a crafty person might prevail, would not failure of justice be therefore imputable to the king for an untrue decision, *though* grounded on a legal rule? None could be imputed, such a decision is the consequence of particular circumstances. When the day, lunar asterism, and sign, in which a man was born are unknown to astrologers, as the purpose is accomplished by assuming the sign from the first syllable of his familiar appellation (for instance, 'A and LA' suggest the constellation of the Ram, and so forth)\* so there is no failure of justice in *recourse* to this expedient in a doubtful case. However after much investigation throwing the load on the supreme ruler, a decision should be made, with due consideration of the *general* conduct of both parties. Accordingly *the author* of the *Ketudcara*, citing the following text (CXXXVI) and expounding it, 'if a man, mentally intending a particular thing, pledge his property not exhibited, nor precisely described and consequently as imperceptible as the subtle element it shall not be considered as a definite pledge' adds this is made evident by the subsequent text (CXXXVII) and if indefinite hypothecation be practised in certain instances, possession may be granted by a special rule without *valid* hypothecation,

## CXXXVI

*Uncertain* —If a man pledge his property unexhibited, and undescribed as to its nature, and consequently imperceptible like the subtle element, that shall not be considered as a definite pledge.

## CXXXVII

*Uncertain* —WHATEVER then belonged to that *debtor*, the creditor may suppose described by the contract.

SOME explain the term, unknown, *instead of* "unexhibited," justifying the interpretation from the sense of the verb *vid*, know that thing, which, be-

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\* In drawing the horoscope of an infant the lunar asterism under which he was born, guides the selection of his name for instance if he was born under *Aśvini* a name is selected beginning with CHA CHĒ, CHU or LĀ. But in drawing the horoscope of a man whose birthday is unascertained, the name suggests the constellation.

ing undescribed as to its nature, is not known or ascertained. It is not certainly described by its limits, the village in which it is situated, and other distinctions, it is therefore similar to the subtle element, equally invisible and imperceptible, and consequently shall not be considered as *sufficiently* definite. For example, "a field measured by a hundred cubits is mortgaged to CHAITRA," it is not thereby particularly known, where and of what description that field is. How should a man so mortgage land? The commentator explains it, "mentally intending *a particular field*," indicating it by a general description, but not actually showing it. "Whatever then belonged to him" (CXXXVII); whatever belonged to the debtor at the time of making the hypothecation, might, through excess of confidence, or unguarded ignorance, be supposed by the creditor *pledged to him*. Whatever the creditor therefore occupied as the intended pledge, would be merely held under the authority of prudence, to maintain the agreement inviolate. They thus expound the gloss of the *Retnacara*, "If indefinite hypothecation &c."

## CXXXVIII

*Smṛiti*,\* cited in the *Retnacara* — SHOULD the creditor, against or even without the assent of his debtor, possess himself of more land or other property than was expressly mortgaged, he shall pay the first amercement, and the debtor shall receive back his whole pledge.

WHEN a field measured by four hundred cubits has been mortgaged, should the creditor annex to it another adjoining field and forcibly possess himself of it, that creditor shall pay the first amercement, namely the amercement first directed, which MĒNU thus propounds, "Now two hundred and fifty *panas* are declared to be the first or *lowest* amercement." To explain the sense of the text, this observation is made respecting fines. CHANDĒSWARA thus comments on the text; "if the creditor forcibly annex to the pledge more land or other property than was expressly mortgaged, and possess himself of it, he shall be fined, and the mortgager

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\* Attributed to CAṬYAYANA

shall receive back the land or other property mortgaged, without paying the sum due."

CONSEQUENTLY the debt, though lent by the party himself, is forfeited by reason of an offence consisting in encroachment on land exceeding the mortgage. But the debtor shall not receive the value of what has been previously obtained by enjoyment, since no text ordains it. Yet, if the debt be not discharged from the use of more land than was mortgaged, the mortgager shall *nevertheless* recover his pledge without discharging the debt; else the terms of the text, "the debtor shall receive back his whole pledge," would be unmeaning.

HERE it should be remarked, that if a loan be obtained on this condition, proposed by the borrower to the lender, "be this field pledged to you; the pledge shall be redeemed after four years, on the seventh day of the month of *Bhādra*: if I do not then redeem it, the pledge shall become thy absolute property;" the mortgage is not usually foreclosed, even though the debtor fail in his agreement. If a covetous creditor, reflecting on this local usage, say, "give a bill of sale;" and a necessitous borrower, to obtain the loan, execute a bill of sale, but insert as a date the future month and year intended by him, and specify in writing, that the price received shall bear interest to that time; and if the debtor occupy the land until the stipulated period expire; is a contract in this form a mortgage or not? It is answered, since a bill of sale is executed, it is a sale and not a mortgage. Does the sale take place immediately, or on the future day specified in the writing? Not immediately; for, if the sale took place immediately, the debtor could not repay the price borrowed and recover his pledge on a subsequent day. Nor can that be deemed admissible; for it would be inconsistent with practice. Neither is the second supposition true; for, since the vender does not intend an immediate sale, his property is not divested. Nor should it be affirmed, that the vender must intend a sale on the day when the writing is executed; for the borrower cannot be supposed to consent to a sale inconsistent with his purpose. On this point it is said, the sale is concluded on that very day when the vender receives the price; but property is not immediately de-

vested. Yet the period, contemplated in the vender's actual intention at the time of the contract, divests the property of the original owner. Or the promise of a future sale is clearly conveyed by the writing then executed; and the borrower, consequently bound by his agreement, must consent to the sale; else he would be punished, and held guilty of a moral offence. Therefore do good men execute such bills of sale.

On this a question arises; if the contract were executed when four thousand years of the *Cal-<sup>l</sup>*-age were expired, and dated in the four thousand and fifth year; should the borrower or witnesses die in the interval, the writing being insufficient evidence, the money lent might be irrecoverable; and how could a mortgage of the land be alleged? That should not therefore be practised. Yet, in fact, since many excellent persons do so proceed, arbitrators by some means admit the writing, because such current practice is remarked. But, if the writing be fully proved, it is a valid bill of sale. Should the borrower or his son be unable to discharge the debt in the interval, the sale must be acknowledged by the son, because it was promised by his father. Else he would be guilty of a great offence in violating his father's engagement: and the king should animadvert on it. But, if he can discharge the debt within the period, the sale is not valid; for the borrower then assented to the divestiture of property concomitant with failure in payment of the debt.

If a borrower execute a mortgage deed for a limited time, and also a bill of sale dated on a future day, there would be no difficulty in recovering the money lent. This is remarked on the prescriptive usage of good men; but it has not been expressly noticed by any author. On the contrary, if a pledge be given upon this condition, "should the debt be undischarged on a certain day, this pledge shall become thy absolute property," then, if the pledge be not redeemed, that pledge shall belong to the creditor, as has been more than once declared, and that alone is suggested by the texts of sages.

It may be here remarked, that, when a loan is made on a pledge received, the pledgee should deliver a written acknowledgement to the debtor, else  
the

the creditor, enjoying the pledge, might affirm after a considerable lapse of time, "this has been possessed by me twenty years and is solely mine." As a written contract relative to tillage is both given and received by the cultivator and landlord, *so should mutual agreements be delivered in this case also.* Accordingly "mutual" is specified in the text of *VRĪHASPATI* (XII).\*

On the subject of pledges something remains to be said.† In fact a pledge delivered for use is a pledge to be used, and a pledge delivered for confidence only is a pledge for custody. The text of *MĒNU* (i. XCI) concerns a pledge for use, his text (v LXXXVIII) must relate to a pledge for custody, since it expresses "without the consent of the owners," his text (i. LXXXVII) regards a pledge for custody. Consequently, since the use and profit of the pledge is the only interest in the case of a pledge to be used, interest at the rate of an eightieth part is prohibited. Should a pledge for custody be used, the use of it not being forbidden by the owner, half the interest is forfeited, but if the use of it were forbidden, the whole interest shall be forfeited. The same meaning should be also attributed to the text of *YĀJNYAWALKYA* (LXXXIV) if a pledge for custody be used, the forfeiture of interest is equitable, since *the use of it* had not been allowed in place of interest, but, if a beneficial pledge be used, there shall be no interest, that is, no interest at the rate of an eightieth part and the like. Since the single word "interest" may be connected with both phrases

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\* *THE COMPILER* takes occasion to relate an ancient tale. A borrower, pledging a valuable vessel through the medium of his own servant, and executing a written instrument contracted a debt. Afterwards the servant being dead the creditor told the debtor, who offered to redeem the pledge, 'the pledge has been already redeemed by thy servant.' In this contest the debtor was cast by many arbitrators. He afterwards truly represented the whole circumstances to a certain king and that king understanding the case, called the creditor and having listened to his narration showed him great courtesy. The king having assumed the character of a friend, took the man's ring under pretence of receiving it at that moment a servant of the king previously instructed, announced to him, that his mother called. Seemingly interrupted thereby he retired to an inner apartment taking the ring with him as it were by mistake. Thence he sent a servant with the ring to the creditor's steward. 'Unless the vessel be instantly produced thy master's life is forfeited, this ring is my token,' hearing this, the steward delivered the vessel to the messenger. Having received the vessel in the inner apartment, he king put beetle in it and called the debtor. He, attending and seeing the vessel, with downcast look said "I have offended, my servant must have been dishonest without my knowledge he has sold this vessel else how could it be in thy possession? The king, having ascertained the weight and value of the vessel by means of artists imposed a fine on the creditor, delivered the pledge to the debtor and directed payment of the debt to the creditor. If there had been a writng adds the compiler, no such dispute could have existed.

† In the original, these remarks are subjoined to the last chapter on the recovery of debt.

(LXXXIV), there is no objection to the admission of both meanings. Such is the opinion of CULLŪCABHATTA.

THAT chattel, from the use of which no loss arises, is a pledge which may be used, that is, one, the use of which causes no ill for particeps of this form signify what may be done without causing any ill, as in the example, "a priest and a king are never to be slighted." Any other pledge is a pledge to be kept, that is one which must be kept or preserved. Hence SŪLAPAṆI'S gloss delivered in the *Dipacalica* (where a pledge for custody is explained a pledge to be kept, such as clothes, ornaments or the like, and a beneficial pledge is exemplified by an ox or the like,) is fully justified and the remark of CHANDĒSWARA, in his gloss on the rule of VIṢṆU (LXXXII), which restricts the word "pledge" to a pledge for custody only, is pertinent. Else since MĒṢU (XCI) also declares, that there shall be no *other* interest when a beneficial pledge is used, the restriction of the term to a pledge for custody, as inferred by CHANDĒSWARA, would be irrelevant. Thus likewise the gloss of MISRA on the text of CĀTYĀYANA (LXXXIX) is fully justified where after observing, that in every case where the pledge is used against the will of the owner, the whole interest is forfeited, and when a slave or the like, being pledged, is employed, half the interest, he adds, but if a pledge for custody be used, the whole interest shall be forfeited. Else, since it is reasonable, that all *other* interest should be foregone, when a pledged slave or the like has been delivered for use, the forfeiture of half the interest would be irrelevant. But if such a slave or the like be delivered for confidence only, the pledge is for custody, and if used, the whole interest shall be forfeited and hence that explicit statement of the distinction arising from this text was proper.

THIS opinion of some lawyers appears correct. a debtor, borrowing five pieces of money, has pledged a copper childron worth ten pieces, the creditor uses it without, though not against, the assent of the owner, during five years from that date; and the vessel is not thereby totally spoiled, but, being much worn, is reduced to half, or a less portion of its original value. in such a case the forfeiture of half the interest *only* would be inconsistent with common sense. The law has been thus explained at large

BUT

BUT others expound the phrase, " on its loss or destruction," which occurs in the text of NĀREDA (LXXXI 3), ' should the lender neglect the preservation of the pledge: ' consequently, should the care of the pledge be neglected by the creditor, and the pledge nevertheless be fortunately uninjured, still the interest is forfeited. For example; a cow is pledged to a Yavana by a foolish debtor, and that ill disposed creditor of the Yavana race neither uses the cow, nor feeds her at his own house, but that cow grazes night and day in the forest, and, being destined to a long life, survives; not being bitten by a snake or the like, or being bitten but cured by some traveller: in such a case *the interest is forfeited.*

VIJNYĀNEŚVARA considers the text of MENU (v. XCI) as relating to a pledge delivered for use; and the text of YĀJNYAWALCYA (LXXXIV), and another text of MENU (v. LXXXVIII) as relating to a pledge not delivered for use. But, if a pledge delivered for use be damaged, interest shall be forfeited, under the precept of YĀJNYAWALCYA, " nor *any interest*, if a pledge for use be damaged" (LXXXIV). " A pledge spoiled shall be made good," if a pledge not delivered for use be damaged in a small degree or the like, it must be repaired, and thus restored in its former condition; should it have been used, interest shall be forfeited. If a pledge delivered for use be damaged in a small degree or the like, it must be repaired, and restored in its former condition, if it bore interest, that interest shall be forfeited. Should a pledge be utterly spoiled or destroyed, an equivalent must be given, or the price of the pledge must be paid, or the principal sum shall be forfeited.



## CHAPTER IV.

## ON SURETIES.

## CXXXIX.

CATYAYANA: — NEITHER the master of *the lender*, nor his professed enemy, nor an agent of his master, nor a prisoner, nor a criminal amerced, nor one whose character is ambiguous,

2. Nor a coheir or joint-tenant *with either party*, nor an intimate friend, nor a pupil, nor a servant of the king, nor a religious anchoret,
3. Nor a man *reputed* unable to pay the sum to the creditor, or a fine of equal amount to the king, nor one whose father is living, nor one who is guided solely by his own froward will,
4. Nor a man, who is not well known, should ever be accepted as a surety for any purpose.

A MAN confined by the king for some offence, becoming surety for another, might *afterwards* plead, “ how can I enforce payment of the debt ? ” Or *it may be objected*, how could he attend to that matter when contested ? A

prisoner therefore should not be accepted as a surety "A criminal amerced," that is one on whom punishment impends: else, since almost every person may casually become liable to punishment, none could be accepted as sureties but this criminal is refused because the fine impoverishes him, and he is therefore unable to make good the debt. Thus some interpret the text, but that is wrong, for the same sense is also conveyed by the words, "a man unable to pay the sum to the creditor." Some again hold, that a criminal amerced is refused as a surety, through apprehension of his sinful misconduct. But in fact, future impoverishment is suggested by the term explained "a criminal liable to amercement," since he is not at present reduced to indigence, there is no vain repetition.

"ONE whose character is ambiguous," so explained in the *Retnācārā* that is, a man of ambiguous character. That gloss intends one, whom honest men suspect to be ill disposed. If his evil disposition be ascertained, surely *he cannot be accepted as a sponsor*. Others expound the term 'accused' they suppose one, whom any person arraigns in a public assembly, alleging that he is addicted to the use of intoxicating liquors.

3. "A COHEIR," a joint-tenant with the creditor or debtor

The *Retnācārā*

THE notion is this, if the creditor accept his own coparcener as a surety, does he not make himself surety? If he accept the debtor's coparcener as a surety, does he not make the debtor surety for himself? A text of *Yājñavalkya* to the same purport will be cited. 'A friend of the creditor *must not be accepted*, lest friendship be violated

"PUPILS," literally apprentices, disciples

The *Retnācārā*

THE reason is, lest affection be diverted. But the author of the *Mitācārā* reads *atyanta āśrabā* instead of *antérnāśrabā*, and expounds it, 'perpetual students in theology'

"A SERVANT of the king," one employed by the king, his minister and

and the rest. On the reading, "nor the king, nor one employed in his affairs," king is illustrative of a general sense it would be superfluous for the king or his minister to become a surety, because the king, by *the* nature of his trust, is an *universal* surety, and his deputed minister or other officer is certainly so likewise, and a servant of the king should not be accepted as surety, lest he avail himself of his superiour power "Religious anchorets" should not be accepted as sureties, because they are venerable and are not capable of civil transactions The want of independent property is the objection against one, whose father is living.

"ONE who is guided by his own will, ' who is solely guided by his own froward will, and not by any consideration of circumstances consequently his incapacity for civil affairs is the objection against him.

"A MAN *reputed* unable to pay the sum to the creditor," if he be unable to pay the sum to the creditor, for what purpose should he be accepted as a surety? "Or a fine of equal amount to the king, if the creditor accept as a surety a man able to pay the sum to him, but unable *also* to pay a fine to the king, then, should he become liable for a fine to the king in consequence of some offence, and be therefore unable to pay both sums, the creditor could not recover the whole sum from him for this reason he should be refused Thus some expound the text, but in fact this text is not restricted to loans, for it expresses generally "for any purpose" Consequently, when a surety is required by the king, he should not accept one who is unable to pay a fine and that is merely illustrative, a man unable to produce the party, should not be accepted as surety for appearance and so forth If a creditor accept, as a surety, "one who is not well known," then, after a lapse of a few days, when he has gone to another place, and the debtor has absconded, from whom could the creditor recover the sum? The creditor should therefore accept, as a surety, none but a man who is well known

He, who becomes a substitute for another (*pratiḥlavati*) is a surety (*pratiḥku*) or bondsman. By parity of reasoning similar sureties should be required in other cases Consequently, from the full sense of the law, he

only, should be accepted as a surety *for any purpose*, from whose suretiship no breach of respect, natural affection, or tender regard, need be apprehended; and from whom, or from the debtor, the sum may be subsequently recovered.

# CXL.

YA'JNYAWALCYA: — IT is declared, that brethren, husband and wife, father and son, cannot become sureties for each other before partition, nor reciprocally lend *their joint property* nor give evidence for each other *in matters relating to the common flock*.

BROTHERS and the rest cannot, before partition, become bound to, or for, each other, and so forth. Before partition a man should not make a loan, taking as a surety his own brother, or the brother of the debtor. Nor should he make a loan to his own undivided brother: for all, that belongs to him, also belongs to his brother: how then can it be a debt? It will be declared, that his brother has no title to what is acquired by the man himself; may not therefore his own acquired wealth be lent to his brother? *The answer is*, why should his brother borrow money from him, since his food and other wants may be supplied from the joint estate. If he need it for religious occasions, why should he not use the joint property? *If he wish to adventure it* for increase of wealth, why should he not improve the joint estate? If he require it for the enjoyment of wreaths, Sanders wood, fine cloth, and the like, that may be supplied out of joint-property; for the law has not forbidden any use of common property.

BUT, if any one resolve in his own mind, "I will perform a religious act on my own separate funds, and I alone shall obtain the benefit of it;" or if his brother forbid such expenditure of the paternal wealth; in such cases a man, intending to dig a pond, or to perform a solemn sacrifice or the like, out of property acquired by himself, but *finding* some part of his own several property unavailable, may borrow from his brother money acquired by *that brother* himself. Why is a loan forbidden before partition? It should not be objected, that a religious act, even though per-  
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formed by one brother on funds acquired by himself, is the act of both undivided brothers, under a text which will be quoted (Book V, v. CCCLXXXVIII), and therefore money received for that purpose from a brother, even though it were acquired by himself, is no debt, and shall not therefore be repaid. Another text\* declares the participation of all brethren in that religious act only which is performed with the assent of all, on funds common to all, and the former text has virtually the same import. That a debt may be contracted with an undivided brother, cannot therefore be disputed.

AGAIN; a man, reflecting, "if I obtain profit on joint property, another brother will also have a title to that profit," only lends at interest his own property, acquired by himself, or he conducts commerce on that capital; in such a case, a small part of his several property being then unavailable, he borrows from his undivided brother money acquired by that brother himself, here also what should prevent him? So, if another brother tell one who dissipates the joint property for the enjoyment of wreaths, sanders<sup>wood</sup>, fine cloth and the like, "gratify thy wish for enjoyment in proportion only to *thy share of the wealth*," and if he, being thereby restrained, supplies his enjoyments out of wealth acquired by himself, but, some part of his several property being then unavailable, borrows from an undivided brother money acquired by that brother himself, here again what is there incongruous? Consequently a debt contracted with an undivided brother for the three purposes of spiritual benefit, of wealth, and of gratification, is in reason valid.

YET YAJNYAWALKYA forbids it. Can such a rule be demonstratively true, that under the text of YAJNYAWALKYA, a debt may not be contracted with an undivided brother, though in reason such a debt be valid? There is no objection to explain 'while undivided,' while the property

\* A text of VARACHA is incorrectly cited in this place. After consulting the *Dwa a paribha* of CHETANA M. and *Suddhanta* of RUDRAPHARA I thus translate the text with the preceding verse: The father being dead his obsequies must be carefully performed by his son but if there be many sons of the father residing in the same place what is done by the eldest alone with the assent of all, and out of the common stock, shall be considered as the act of all.

BUT VĀCHESPATI BHATTĀCHĀRYA does not acknowledge the property of the wife in her husband's wealth. There is not, in his opinion, any objection to a gift made by her; however, he considers the husband and wife as never undivided in *respect* of property. This may be admitted; but the author of the *Mitācsharā* admits partition between husband and wife, and acknowledges the wife's property in her husband's whole estate; for in his gloss on the text of ĀPASTAMBA above cited (Book V, v. LXXXIX) he says, "since MENU and the rest do not deem it a theft, if she use her husband's property in the entertainment of guests, and eleemosynary gifts, therefore the wife also has ownership of her husband's wealth: else it would be a theft." A partition may therefore be made at the option of the husband, but not at the option of the wife; as will be mentioned (Book V, Chapter II). The wife's property in her husband's estate is thus shown (Book V, v. LXXXIII); partition *in general* is not again denied: and the text, which does deny partition, is expounded as relating to acts, which concern the nuptial fire and the like. But RAGHUNANDANA says, "the legislator mentions partition between husband and wife, intending the assignment of an equal share with the sons, by way of provision for the wife's maintenance: if that have not been done, testimony for each other and so forth is forbidden."

#### CXLI.

NAREDAY—AFTER partition, but not before it, brothers may become witnesses or sureties for each other, and may reciprocally give and receive *presents, or make contracts with each other: but in regard to property separately acquired, they may do so even before partition.\**

THEY may give and receive loans, for the text coincides with that of YĀJNYAWALKYA (CXL). Since there is no ground for selection, both delivery and receipt are meant. Or, if a man erroneously make a present, receipt is forbidden, if he erroneously take a present, gift was forbidden. If the prohibition of receipt be infringed, the benefit of a gift for a religi-

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\* Book V, v. CCCLXXXVIII 3.

debtor be the cause of its remaining undischarged *by him*. But, if wealthiness be proved, and the debtor withhold payment through dishonesty or the like, a surety for payment would in that case be compelled to discharge the debt, not the surety for trust. This also constitutes a difference. There is again a difference in the case of the debtor's decease, and various distinctions may also be deduced from other circumstances.

IN fact, when the surety for honesty says, "that man is trustworthy," if he punctually paid debts formerly contracted from others without dispute, and never did a dishonest act, but subsequently practise knavery in regard to the payment of this debt, the surety is not in that case amenable; for none can know future events. But, when the surety for honesty says, "that man will practise no knavery; of this I am well assured; confiding in my words, lend him the money without hesitation; then indeed, should the debtor afterwards practise knavery, the foolish surety must pay the debt. If a surety affirm, that a dishonest borrower is honest, then this surety for honesty is belied and must pay the debt. Providing for this case, the text of VRĪHASPATI expresses, "the two first must pay the sum lent."

"AT the time stipulated (CXLII), at the term, as stipulated *by the debtor*. For example, when the debtor promised, "I will discharge the debt in such a year and month, on such a day," it must be paid on that very day in that month and year.

\* THE two last (the surety for payment and the surety for delivery) on default; *they shall be compelled to fulfil their engagements*, if they do not spontaneously pay the debt or deliver the effects.

The *Retrāra*

HERE "at the stipulated term," must be supplied after the words "pay the debt."

"If they be dead," literally, without them. On failure of the surety for payment and of the surety for delivery, in consequence of their death,

or religious seclusion from the world. Consequently, should a surety

furety for appearance or honesty die or go to a foreign country, his son is not bound; but if a surety for payment or delivery die or go to a foreign country, his son is held bound.

It should be here noticed, that, so long as the surety for appearance or honesty be forthcoming, the debt is secured by a surety and bears interest at the rate of an eightieth part increased by an eighth (XXVII). If they die, or go to a foreign country whence their return cannot be expected, the debts are thenceforward unsecured by pledge or surety, and bear interest at the rate of two in the hundred. But the grandson of a surety for payment or for delivery is not bound *by his grandfather's engagements*, as will be mentioned.

### CXLIII.

NĀREDA:—THREE sorts of sureties, for three purposes, are mentioned by the wise; for appearance, for payment, and for honesty:

2. If the debtors fail in their engagements, or if *his* confidence misled *the creditor*, the surety must pay the debt; and so *must the surety for appearance*, if he do not produce *the debtor*.

For three purposes in respect of things, namely for payment, appearance, and honesty, three sorts of sureties are mentioned. What is to be done by them? The sage declares it (CXLIII 2). "If the debtors fail in their engagements," if they do not discharge the debt, "the surety," namely the surety for payment, must pay the debt. "If *his* confidence misled *the creditor*;" that, whereby a man confides, is confidence. If what is meant by that term, namely the confidence of the surety for honesty, produce incongruity, or excite an erroneous notion, (for the word has an inflection which bears a causal sense;) that is, if the assertion of the surety produce error, or in other words if it prove false, *he must pay the debt*. If the reading be *vibbāditē* instead of *virōddhitē*, it must be thus explained; if confidence, or the notion excited by the assertion of the surety for honesty, be miscon-



ceived, or prove contrary to fact, that is, if it prove false, or, in short, if the debtor be dishonest, the surety, namely the surety for confidence, must pay the debt. Such is the meaning. "If he do not produce *the debtor in court*, the text must be so supplied. If he do not compel the appearance of the debtor, the surety, namely the surety for appearance, must pay the debt.

BUT the surety for delivery is not here mentioned, in the text of NA' REDA, therefore, three sureties only are noticed. The apparent inconsistency is thus reconciled according to MISRA, the text of NA' REDA concerns only sureties for debts, but the text of VRĪHASPATI concerns both loans for consumption and loans for use, there is not consequently any contradiction. But according to others the surety for delivery falls under the *general* description of surety for payment, for there is no *material* difference between a surety for the delivery of mortgaged property, or of the debtor's assets, and one who has undertaken the payment of *the debt* entertaining this notion, NA' REDA has only mentioned three sorts of sureties. Distinguishing this form of agreement, "if the debtor do not pay the debt it shall be paid by me," from this form, "obtaining assets from the debtor, I will deliver them," or distinguishing the engagements to pay the money lent, and to deliver the property mortgaged, VRĪHASPATI has discriminated the surety for payment and surety for delivery. there is not consequently any inconsistency. In effect there is no difference of meaning. The text is cited by HELA YUDHA and CHANDĒSWARA, and is therefore inserted in this digest, though not quoted by LACSHMID'HARA and others.

#### CXLIV.

YĀJNYAWALKYA —SURETISHIP is ordained for appearance, for honesty and for payment, the two first *sureties*, and not *their sons*, must pay the debt, on failure of their engagements, but even the sons of the last *may be compelled to pay it*.

THE two first, the surety for appearance and surety for honesty, must pay it on failure of their engagements. Even the sons of the surety for payment may be compelled to pay the debt.

The *Dīpākalā*  
Sic. cr.

SINCE the son of the surety for payment is alone declared liable for the debt, it appears that the son of a surety for appearance or for honesty is not liable for the debt. Herein the author of the *Mudāssara* concurs but he has delivered this gloss on the term "honesty" or trust, *the surety says*, "confiding in me, lend him the money; he will not deceive thee for he is son of such a one, his land is very fertile, and he has an excellent estate and all other circumstances are *in this manner* almost fully particularized. That no real inconsistency with the text of VRĪHASPATI exists, has been already explained in the gloss on the text of NAREDA.

### CXLV.

**CĀTYĀYANA** — *Let the king cause sureties to be given for payment, for appearance, for confidence or for honesty, for the matter in contest, and for ordeal, on failure of their engagements they shall be liable according to circumstances*

'For payment,' for the discharge of the debt and for the delivery of mortgaged property and the like. For appearance, 'for producing the debtor. 'For confidence,' for trust the words are synonymous. "For the matter in contest with the creditor. "For the performance of ordeal 'that surety shall be compelled to pay the debt "on failure of his engagement 'or, *in other words*, if the engagement be not performed. Such is the sense, as apprehended by CHANDESWARA.

"For the matter in contest, a suit being instituted by the creditor for the recovery of money from the debtor he, whom the king takes as a surety lest the debtor or creditor abscond through apprehension of losing the cause, is surety for the action, the fourth sort of surety, as *also directed* by a text which will be quoted from YĀJNYAWALKYA \*. This surety says, "if that man do not appear to *defend* the suit, he shall be produced by me, or he says "I will perform what may be required from that man '.

AFTERWARDS, during the procedure if ordeal must be performed by

\* Not again cited in this digest. I subjoin the translation according to the gloss of RAG UNANDANA. From both parts a surety must be taken able to perform the decree by *paying the sum adjudged and so forth*.

the party himself, he, whom the king, under the text of *Yājñavalkya*, takes as a surety, suspecting the creditor's or debtor's wish to abscond because he perceives the probable detection of his falsehood, is surety for ordeal, the fifth sort of surety. He says, "when this debtor should pass ordeal, I will then produce him," or he says, "I will perform his office." This should be understood incidentally in the case of a surety for the creditor

THIS text should be placed under the title of administration of justice. It carries an *apparent* inconsistency with the text of *Vṛ̥haspati*, where four sorts of sureties are propounded. That may be reconciled the text of *Vṛ̥haspati* concerns debts alone, but the text of *Ca'tyā'ana* concerns law suits in general, there is no contradiction. Or the sureties for the action and for ordeal fall under the description of sureties for appearance, distinguished, *however*, by the difference of agreement. Accordingly *Mitra* says, the surety for attending the decision of the suit and for ordeal and the like, is mentioned by *Ca'tyā'ana*, is included in the surety for appearance and the rest

ACCORDING to the last interpretation of the text of *Vṛ̥haspati*, consistent with the gloss of *Sūlapā'ni*, "matters of debt" being there specified, the apparent contradiction is obviously reconciled in this mode in matters of debt there are four sorts of sureties, but for law suits in general there are five sorts. Some however hold, that, when a suit is instituted, he, who is appointed by the plaintiff, or defendant, who is himself unable to act, to be his representative for the pursuit or defence, is surety for the action. By the nature of the undertaking, if he be cast, his principal is cast, and, if he prevail in the suit, his principal prevails. The king should exact from the principal a written engagement in this form, "his success or defeat shall fall on me"

A WRITTEN acknowledgement should be executed by sureties in their own handwriting, or in that of another person. In the margin of the written contract of debt the surety may write, "I such a one, son of such a one, will produce unto thee such a one thy debtor, on a certain day,

" day, month and year, (*specifying the time* when the debt ought to be discharged,) provided he have not paid the debt before that time; should I fail herein, I will myself discharge the debt with interest." A surety for confidence should execute a similar obligation, but call himself " surety for confidence," and after inserting the name of the borrower and other particulars, conclude by declaring " that man is honest; if this assertion prove false, the debt shall be paid by me." So in the case of a surety for payment, for delivery, for the action, or for ordeal, the undertaking abovementioned should be duly recorded in writing. By the surety for the action, according to the last mentioned opinion, an undertaking may be reduced to writing in this form, " I will answer the plea so long as the suit remain *undecided*." This and other points may be reasoned according to received practice.

THAT the debt, not being discharged by the debtor at the stipulated period, must be paid by the surety for payment, is evident from the expression, " on failure of their engagements." A special rule is declared in respect of a surety for appearance.

#### CXLVI.

CĀTYĀYANA propounds it:—If a surety for the appearance of a debtor produce him not at the time and in the place agreed on, he shall discharge the debt, unless he was prevented by the act of GOD or the king.

2. AFTER the time of *difficulty* has past, the surety, who still does not produce him, shall pay the debt; and the same law is declared, even if the debtor should die.

" At the time and in the place;" the surety for appearance, having promised, " I will produce the debtor at such a time, and in such a place," if he do not produce him at that time and in that place, becomes liable for the condition of the writing, namely for the debt; that is, he must pay the debt to the creditor; such is the sense of the first part of the text: and this was conveyed by a former text; but a special rule is subjoined; " unless he was prevented by the act of GOD or the king." If the debtor

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abscond

abscond through fear of the king, in consequence of another's fault, or if he go to another country, promising to return at the close of a month, but be detained by illness a year *or more*, the surety for appearance is not blamable for not producing the debtor.

“ AFTER the time has past ;” after the king's violence has past away and so forth After relief from *apprehension* of the king's violence, or after his return to his home on recovery from sickness, if the surety still do not produce him, through dishonesty, inability, or the like, *the king* shall compel the surety to pay the debt The text should be so supplied

“ AND the same law is declared, even if the debtor should die,” that is, the surety must pay the debt The *Retnacara*

THIS opinion, literally taken, is inconsistent with reason, for favour is shown him, if he be prevented by the act of GOD or the king, but none is shown in the case of death, which is the most absolute hindrance arising from the act of GOD Its purport must therefore be assumed according to the exposition of VACHESPATI MISRA ; and that is meant in the *Retnacara* His exposition is as follows when the time, at which the surety undertook to produce the debtor, has past without any hindrance from the act of GOD or the king, or, in the case of hindrance by the act of GOD or the king after that *difficulty ceased*, if the surety still procrastinate, thinking, ‘ I am surety for appearance and not bound for payment, I will produce the debtor two months hence, but at present I will attend to my own business,’ in such a case, if the debtor afterwards die, the surety must pay the debt Such is the sense of the phrase and this is also the import of the text of VRĪHASPATI, “ on failure of their engagements, the two first must pay the sum lent (CXLII 3) MENU also declares, that the surety for appearance must himself pay the debt, if he do not produce the debtor

#### CXLVII

MENU —THE man, who becomes surety for the appearance of a debtor in this world, and produces him not, shall pay the debt out of his own property.

MUST dispose himself to pay the debt out of his own property.

CULLÚCARHATTĀ.

HERE it should be observed, that, when the agreement is simply this, " I will produce or show the debtor at such a time," and no place be specified; if he show him on that very day, while busied in holy worship or the like, or occupied with other affairs and so forth, it might be supposed on a cursory view, that the agreement is not violated, but we humbly think it reasonable to affirm, that in such a case the agreement is infringed; for the creditor requires the debtor to be produced at the time agreed on, that he may recover the sum lent, he requires him to be so produced, as may tend to the recovery of the money - this the surety undertakes to fulfil, and the terms of his engagement must be so understood; but it is not fulfilled by indicating *the debtor* at such a time, when he is not amenable the surety must therefore show the debtor at a time when he is at leisure and amenable. Such is the modern mode of interpretation

A RULE has been propounded for the case of a debtor absconding through the fault of another; what is the rule if he abscond to evade payment of the debt? On this point

#### CXLVIII

VP ĪHASPATI declares: — LET the creditor allow time for the surety to search for the debtor, who has absconded; a fortnight, a month, or six weeks, according to the distance of the place, *where he may be supposed to lurk*.

2. Let no sureties be excessively harassed, let them gradually be compelled to pay the debt; let them not be attacked if the debtor be at hand and amenable. such is the law in favour of sureties.

" For the debtor, who is missing or has absconded," according to the literal sense of the verb *śas*, be invisible or not to be found. " According to the distance of the place," according to the remote or near situation of the

the place and so forth. " Gradually " without the consent of the surety, the whole sum shall not be at once exacted at the stipulated term " If the debtor be at hand," if he be present, or if he be willing to pay the debt, sureties must not be required to produce the debtor or pay the debt

In respect of a surety for honesty, a text of law, cited in the *Retnacara*, propounds a rule

### CXLIX.

*Smṛiti* — FROM a malicious debtor, who is on any account disposed, through enmity, to take the protection of a stranger *professedly hostile to his creditor*, or to do any thing inauspicious to him, or to adopt the conduct of wicked men,

2. Let a surety for honesty be taken *as a precaution* against such behaviour, if his conduct belie the promise, his surety must pay the debt.

"FROM a malicious debtor, who is disposed &c;' whose mind is bent on taking the protection of a stranger, that is, of a professed enemy to the creditor, on doing any thing inauspicious to the creditor, or on adopting the conduct of wicked men, such as thieves and the like Why should a debtor take the protection of his creditor's antagonist? In reply to this he adds "through enmity" lending his own money the creditor confers a favour; when he demands his money, the malice of a wicked man is roused This is obvious

The *Retnācara*.

"As a precaution against such behaviour," lest he should take refuge with a professed enemy of the creditor and so forth let some person be taken as surety for honesty or confidence, that is, for the certainty, that he will not seek the protection of a professed enemy and so forth. Such is the sense of the first phrase He is in reality surety for honesty He says, "that man is honest, he will be ready to pay the debt, and will not take refuge with *thy* professed enemy."

"If his conduct belie the promise," if it be different from what was promised taking the protection of the creditor's enemy, if he discharge not the debt, the king shall compel the surety to pay the debt at the close of the stipulated term. Such is the sense of the last phrase and this is also the import of VRĪHASPATI's expression, "on failure of their engagements, the two first must pay the sum lent."

ON this text (CXLVIII) CHANDESWARA remarks, that, "wherever confidence is wanting, the king should require a surety for confidence or *bonesty* to be given." Accordingly, if the creditor refuse the loan, apprehending the insolvency of the borrower, and some person affirm, "he is not insolvent," and if the creditor, confiding in that assurance, lend the money, that person also is a surety for confidence, as has been already noticed. This and other points may be reasoned. Hence BHĀVADEVA has said, if it be affirmed by some person, "that man is not thy debtor, but some *other* honest man," should it be afterwards proved by other evidence, that he was the debtor, that cheat is *deemed* a surety. According to this opinion of BHĀVADEVA, it must be understood, that, if a cheat, sent by the debtor, make such affirmation, he is only *d em d a* surety for confidence, but, if he make that affirmation when questioned by the king or the umpire, he is a perjured witness, and shall undergo the punishment of false testimony.

IN law suits there are three sorts of sureties, the representative of the party, who pleads his suit, the surety for his appearance, and the surety for the sum which may be due from him. This and other points may be understood from popular *practice*. It has been almost expressly declared already, and should be further discussed under the title of administration of justice.

WHAT should be done in the case of a surety for ordeal, CĀTYĀYANA declares.

# CL

CĀTYĀYANA — AT the time and place when the ceremony should be performed, if he fail in ever so small a degree,  
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the surety shall be compelled to pay the sum as a just debt: such is the law respecting proved debts.

“ WHEN the ceremony should be performed ;” when ordeal should be performed.

The *Retnācara*.

THE meaning is, that this concerns ordeal. If the surety for ordeal, having declared, “ when ordeal shall take place, I will produce that man,” should pass that day, however inconsiderable the delay may be; if he delay it one watch, or even half a watch beyond the day appointed, the surety, who entered into that engagement must pay the sum “ as a just debt” proved to be due. So much has been delivered by way of commentary on the preceding text of CAṬYĀYANA (CXLV). MENU has delivered a text of the same import with the expression of VRĪHASPATI, “ and even their sons, if they be dead” (CLI 2).

“ A SURETY for payment” (CLI 2), a surety, who has formally declared, “ I will pay *the debt* ” Since the text (CXLII) expresses, “ even their sons if they be dead,” “ heirs” may here signify sons (CLI 2).

The *Retnācara*.

EVEN the surety for delivery, mentioned by VRĪHASPATI, is considered by MENU as the same with the surety for payment. By specifying the surety for payment, he exempts the son of a surety for appearance or for honesty and that has been expressly declared by MENU in the text, which precedes the passage quoted.

## CLI

MENU:—BUT money, due by a surety, or idly promised to musicians and actresses, or lost at play, or due for spirituous liquors, or what remains unpaid of a fine or toll, the son of the surety or debtor shall not in general be obliged to pay.

2. SUCH is the rule in case of a surety for appearance or  
good

*good behaviour*; but if a surety for payment should die, the judge may compel even his heirs to discharge the debt.

“ MONEY due by a surety,” what was payable by a surety.

CULLUCABHATTI.

Idle promises and the rest will be discussed in the chapter on payment of debts

“ THE son shall not be obliged to pay money due by a surety,” this, which had been previously mentioned, must be understood of money due by his father, who was surety for appearance.

CULLUCABHATTI.

THE word “ appearance ” must allude to the debtor as a near term. The honest and dishonest proceeding of a debtor had also been propounded hence the surety for honesty is also comprehended under the text. This YA’JNYAWALCYA makes evident.

## CLII.

YA’JNYAWALCYA:—SHOULD a surety for the appearance or the honesty of another die, his sons need not pay the debt, but the sons of a surety for payment or delivery must pay *the sum lent*, or *deliver the thing undertaken*.

“ SURETY for the honesty of another,” surety for *the good behaviour of the debtor*, giving confidence to the lender. ‘ Die ’ is illustrative of seclusion from the world, remote absence and the like “ The sons of a surety for payment,” the literal interpretation is this, the sons of those, who are bound for payment, that is, who are sureties for the discharge of a debt or the delivery of mortgaged property, must pay the sum lent.

“ THOSE who are bound for payment,” the sons of a surety for payment.

A SURETY for delivery is comprehended under the terms of the text. That in some instances the son of a surety for appearance must also discharge the debt, CATYĀYANA declares

## CLIII

CATYĀYANA — SHOULD a man become surety for the appearance of a debtor, from whom he had received a pledge *as his own security*, the creditor, *if that surety die*, may compel his son to pay the debt on proving the whole case.

IF he became surety for the appearance of the debtor, after receiving a pledge *for his indemnity*, and the whole case be proved by the claimant or creditor, then, if that surety be dead, his son may be compelled to pay the debt “Any how” and “the person bound” must be understood, for the purpose of making the agent in the sentence the same, agreeably to rules of grammar, “*should a man become surety after receiving a pledge, and be any how proved to have received that pledge &c*” “Proved” is in the regular passive form

THUS, a borrower asks a loan of a moneylender, and he requires a surety, but the surety, for his own assurance, demands a pledge in such a case, he became surety for the appearance of a debtor, from whom he had received a pledge. If that surety die, and the debtor also die or be unable to discharge the debt, the son of the surety may be compelled to pay it. That debt, however, was not secured by a pledge *delivered to the creditor*, the interest therefore shall be computed at the rate of an eightieth part increased by an eighth. “Appearance” is here illustrative of a more general sense. Hence, if a surety for honesty also take a pledge *as his indemnity* and die *unexonerated*, his son may also be compelled to pay the debt, for MENU, using the expression ‘a surety other than for payment’ intends the surety for honesty as well as the surety for appearance, who are both different from the surety for payment. May not the expression used in the text of MENU (CLIV), “a surety other than for payment, be restricted to the surety for appearance since that coincides with the text of CATYĀYANA? If the surety for honesty have likewise received a pledge,  
why

why should not his son pay the debt, since the reason of the law applies equally to both? Accordingly this gloss is delivered in the *Mitácshará* on the text of *CAṬYĀYANA* (CLIII): "surety for appearance" is illustrative of surety for honesty. However, the text is there read, "even without assets left by his father," instead of "on proving the whole case."

## CLIV.

**MENU:—**ON what account then is it, that, after the death of a surety other than for payment, the creditor may in *one case* demand the debt of the heir, all the affairs of the deceased being known and proved?

THIS is a question proposed. "Surety other than for payment;" different from the surety for payment, namely a surety for appearance *and so forth*. "All the affairs of the deceased being known and proved;" the circumstances, such as the receipt of a pledge, *being proved*; that having been taken, and the receipt of the pledge by the surety being known and proved, and *so forth*. "The creditor, literally the giver;" the person, who delivered a loan. After the death of that surety, on what account, and from whom, can he demand payment of the debt, since the surety *himself* is dead? This is a question proposed. The answer follows.

## CLV.

**MENU:—**IF the surety had received money from the debtor, and had enough to pay the debt, the son of him, who so received it, shall discharge the debt out of his *inherited* property: this is a sacred ordinance.

Such is the interpretation delivered in the *Retnācard*. But CŪLLŪCA-BHATTA explains the term as an epithet of surety; it signifies one, to whom property has been given as a pledge: and thereby having in his hands a lien on a sum sufficient to pay the debt, *his son shall discharge it*.

HELA'YUDHA otherwise expounds the phrase, "all the affairs of the deceased being known and proved:" "the circumstance of his not having received any pledge being known and proved." Thus, if he became surety without having received a pledge, and the whole case be known and proved, on what account could the creditor demand the debt *from his son* after his death? Of course on no account. Hence, after the death of one, who became surety for the appearance of another without receiving a pledge, the judge shall not compel his son to discharge the debt. But the subsequent text (CLV) is explained as above. In effect there is no difference. However, the law concerning money due by a surety for appearance, already propounded (CLI), would be *vainly repeated* in the subsequent text (CLIV).

"If the surety had received money, if property had been delivered to him not amounting to gift. Consequently, if effects had been delivered to the surety by way of deposit, without declaring a positive gift and so forth, if the surety be such, *we say*, his son shall discharge the debt out of his property, namely the property which is in his possession, held as a deposit. He must discharge it although he hold no property given *to him*. This takes place, when the surety for appearance has not produced the debtor, and that debtor afterwards dies, or though living is insolvent. This case is intended. Or with a view to the case of a surety for payment, this text (CLIV) enforces the sense of the preceding text. "All the affairs of the deceased being known and proved," the whole circumstance of his not having received a pledge being known and proved. On what account then might the creditor demand the debt, after the death of a surety for appearance, who had received no pledge? It follows of course, that on no account can he demand it. By the condition specified, that the receipt of no pledge be proved, it is intimated, that, if he became surety for the appearance of a debtor, from whom he received a pledge, then, *should he die*, the creditor may recover the debt from his son.

Is there be several sureties, by whom must the debt be paid? And what shall be the decision of such a case? For instance, if there be many sureties for payment, or many sureties for appearance, or honesty, who have received a pledge, in such a case may payment be required from any one of them? or must they all pay their proportionate shares of the debt? or each severally pay the whole sum?

## CLVI

YAJNYAWALKYA: — WHEN there are two or more sureties jointly bound, they shall pay their proportionate shares of the debt, but, when they are bound severally the payment shall be made *by any one of them*, as the creditor pleases.

AT the time of contracting the debt, if it were settled by the express declaration of the creditor or of the debtor, or by the engagement of the sureties themselves, that the creditor shall receive the debt from the hands of any one of several sureties bound for the same debt, this text propounds a rule of decision for that case. Two or more persons may become sureties in consequence of the creditor's requisition. For instance, he may require several sureties reflecting "if a single surety die as well as the debtor, from whom could the debt be recovered?" Or the debtor may ingenuously give several sureties. Other cases may be easily supposed.

THE sense of the text is this, when there are many sureties, they must make up the sum according to their proportionate shares, and pay it to the creditor. The whole meaning is, that the general law directs payment of the debt by proportionate shares in the case of many sureties for the same debt. He propounds a special rule "but when they are bound severally &c." If they be bound in the same manner as a single surety, if any man singly become surety for a debt, as that whole debt must be discharged by him, so, if they become severally bound for the payment of the whole debt, *it may be exacted from any one of them*. When these sureties become so bound, the payment shall be made *by any one of them*, as the creditor pleases. Consequently, should the creditor chuse to require payment of the whole

whole debt from DEVADATTA alone, it must be discharged by DEVADATTA alone if he chuse to require payment of the whole debt from any one of them, it must be paid by any one of them. But, if he chuse to require it from all proportionally, it must be discharged by all the sureties. In this and other similar modes should be understood the creditor's option.

If the creditor be desirous of exacting payment of the whole debt from each of the sureties, what would be the consequence? Since that is contrary to justice, his wish of exacting an undue sum would be fruitless - for who can obtain many hundred *suvernas* for a loan of one hundred *suvernas*? To detail the reason of the law would unnecessarily swell the book, it is therefore unnoticed.

SHOULD the creditor chuse to exact payment of the whole debt from any one surety, it is settled that he must discharge it. Having paid it, may that surety recover from all the other sureties their proportionate shares of the debt? On this question a certain author has said, he shall not recover *their proportionate shares from the other sureties*, since no law *has expressly declared it* for the general rule directs, that "*they shall pay their proportionate shares*," and it is intimated by a special rule, that "payment shall be made as the creditor pleases." Consequently, when there are two or more sureties bound like a single surety for the payment of the whole debt without mutual connexion or *joint responsibility*, then the payment shall be made as the creditor pleases: he may exact payment of the whole debt from any one of them, or from all the sureties, under the authority of that special rule. In a different case, when two or more sureties are jointly bound, they must pay their proportionate shares of the debt. how could one surety, having discharged the whole debt, recover from the rest their proportionate shares, when all were severally bound like a single surety? The law forbids it.

THAT is wrong, for the general and particular rules would be irrelevant, since there would be no contradiction of sense or *exception*. In all cases where two or more persons have become sureties, all the sureties shall pay their proportionate shares of the debt, but, if they be severally bound like a single surety, another distinction is stated, namely that payment shall be made

made as the creditor pleases : as in the injunction, " give curds to the priests, and diluted curds to the CAUNDINYAS," meaning to those, who have officiated at the solemn rites.\* In fact, the expression, " as the creditor pleases," should be considered only as a circumstance of the action. That action is suggested by the nearest term, " they shall pay : " and the agents in the sentence are the sureties just mentioned. It appears therefore, that immediate payment must be made by the exertion of any one of them, or by all the sureties, at the option of the creditor : and that exertion consists in making up the sum by any possible means, and so forth. It follows, that all must *ultimately* pay their proportionate shares of the debt. There is not consequently any difficulty. Again ; if any one surety refuse to pay his share of the debt, the king shall compel him to pay it. But if any one of many sureties say, " I will alone discharge the debt," no law directs, that it shall be solely paid by him ; reason alone suggests it.

WHEN the debtor gives a second surety for payment, or for appearance, to the surety for payment ; in that case also, like a creditor obtaining the sum from the surety who is responsible to him, the original surety should pay the debt to the creditor ; but the subordinate surety cannot be attacked by the original creditor. So in other cases a rule of decision may be deduced by the reader himself.

If the sureties become severally bound, each for his own undertaking, they may each be severally compelled to pay the whole sum, for which he became bound, to the creditor. In this gloss of the *Vivāda Retnācāra*, " each severally " signifies one by one ; intending the case of more than one *separate engagement*.

" As the creditor pleases ; " for instance, when the engagement is made, the creditor says " at my option the sum may be exacted from any one surety ; I am not restrained to make a joint demand ; any one surety must pay the whole sum." Such is the sense.

*The Vivāda Chintāmeni.*

\* I infer the whole example, which is incomplete in the citation. The special injunction is an exception to the general precept. But a rule, unconnected with, and independent of another, is not a particular or exceptive rule.



THIS point has been sufficiently explained by the text of VRĪSHASPATI (CXLII 3) If the surety for payment die, it is established that the debt may be recovered from his son, shall it be recovered with or without interest?

## CLVII

VYĀSA —THE son of a son shall *in general* pay the debt of his grandfather, but the son *only* shall pay the debt of his father incurred by his becoming a surety, *and both of them* without interest, but it is clearly settled, that their sons, *the great grandson and grandson respectively*, are not *morally* bound to pay.

THE sense is, the grandson must pay the debt which was contracted by his paternal grandfather without giving a pledge This must be considered as appertaining to the title of payment of debts “ The debt of his father incurred by his becoming a surety ’ if his father became surety for the payment of a debt due from any person, or, taking a pledge, became surety for his appearance or honesty, then should the father die, his son must pay that debt without interest, he must only pay the exact sum borrowed, and no interest upon it Consequently the entire debt of the grandfather must be paid by the grandson without interest, and the debt of the father, incurred by his becoming a surety, must be paid by the son without interest

The Retnacara

HERE the entire debt of the grandfather signifies the debt contracted by the grandfather with a stipulation of interest “ Their sons are not *morally* bound to pay, a son of the grandson, and a son of the son The great grandson need not pay any debt of his great grandfather, nor the grandson the debt of his grandfather incurred by becoming a surety

## CLVIII

CATYAYANA —MONEY due by a surety need not on any account be paid by his grandsons, but in every instance such a debt incurred by his father must be made good by a son without interest.

THE

THE debt of a grandfather, incurred by his becoming a surety, need not be paid by grandsons; such a debt shall only be paid by a son: still, however, without interest. To denote this, the particle is employed. The connective sense is, that the son is also exempted from the payment of interest. From the expression "in every instance," a certain author has deduced, that the debt of his father, incurred by his becoming a surety, or on his own account, shall be paid by the son without interest, as a debt incurred by his grandfather *is paid* by a grandson *without interest*. That is wrong; for it is inconsistent with a text which will be cited from VRIHASPATI (CLXVII 2), and with the gloss of CHANDĒSWARA, "the debt must be paid by sons with interest, as if it were their own." Hence the expression "in every instance" must be understood to signify "in every instance of a surety for payment and so forth."

## CLIX.

*Smṛiti*, cited in the *Mitācsharā*:—SHOULD the debtor be insolvent, and the surety have assets, the principal only must be paid *by his son*; he is not liable for the payment of interest.

THIS text also ordains the payment of a debt without interest by the son of a surety for payment. What proof is there, that the debt shall be discharged without interest by the son of a surety for the appearance or honesty of a debtor, from whom he had received a pledge? It should not be affirmed, that the text of CĀṬYAṆA above cited, expressing "in every instance," *is authority for exempting him from the payment of interest*; for that may be otherwise expounded. Nor should it be affirmed, that the text of law cited in the *Mitācsharā* may authorize that inference, if "assets" be explained "a pledge." The author of the *Mitācshara* does not warrant such an interpretation.

ON this point it is said, there is no authority for asserting, that the debt shall be paid with interest. The text of CĀṬYAṆA directs generally, that a debt incurred by a surety shall be discharged without interest. Consequently that is settled in every instance of a debt incurred by a surety: but

in the present instance the consequence might be inconsistent with reason. It cannot be true, that the son of him, who, having received effects worth ten pieces of money, became surety for a debt of five pieces, shall pay the debt without interest. If a chattel of small value have been received as a pledge, then only shall the debt be discharged without interest; but when valuable effects have been received, why should payment be accepted without interest, while the assets are sufficient for the *whole* debt? The debt must therefore be discharged with interest; and the surety must restore the surplus, if there be any, to the debtor or his family.

THIS decision regards a pledge which may not be used; it is not fit, that the surety should use the pledge. But, if it be used, payment must be made in proportion to the use and profit *of the pledge*. If it be asked, the pledge received being of very inconsiderable value, the whole debt, even without interest, might not be fully discharged? The answer is, even that is admissible: accordingly it is expressed in the text of MENV, "if the surety had enough to pay the debt;" and in the gloss of the *Mitácshará*, "if he had received a sufficient pledge." Should the son of the surety also die, the successor of the debtor, who has received his heritage, should withdraw the pledge from the grandsons of the surety, and himself discharge the debt. Such is the meaning.

IF there be two or more sureties for the same debt, and one of them die leaving a son, should it be the creditor's choice to recover the debt from the son, he must receive it without interest, and not with interest. But, should it be the creditor's choice to recover the debt from another surety, the son of the deceased surety must pay his proportionate share; but he need not pay interest, for he is the son of a surety. The creditor, however, may recover the debt with the whole amount of interest, since the surety *called upon* must immediately pay *the whole sum*. Whence then can the interest be recovered on the share of the debt which is payable by the son of a deceased surety? To this it is answered, if there be many sureties severally bound like a single surety, should any one of them die leaving no son or other *heir liable for the debt*, from whom could his share of the debt be recovered? Consequently, as in that case the surviving sureties must contribute their proportionate shares

of the deficiency, and discharge the debt, *although* " payment be made as the creditor pleases ;" so in this case also, even though the son be living, he is as it were nonexistent in respect of interest : consequently the surviving sureties, together with the son of the deceased surety, must contribute their proportionate shares of the principal sum, but the amount of interest must be made good by them unaided by that son.

BUT some lawyers remark, when the creditor makes his election of recovering the *whole* sum from one surety, he shall receive it from one alone ; how can the surety, who discharges the debt, recover proportionate shares from the rest ? But, if the creditor have chosen to receive the sum from all the sureties in due proportion, then the son of a deceased surety must pay his share of the debt without interest. Again ; when five persons have become jointly bound as sureties for a debt, then, should one die, his share of the debt must be received from his son without interest : but, if he leave no son or other *amenable heir*, his proportionate share is lost ; since it was virtually understood when the agreement was made, that the five persons were each bound for a fifth part of the debt. Yet, if it were agreed, " should any one of us die, the debt must be discharged by such of us as survive," then the whole debt must be paid by the surviving sureties contributing their proportionate shares. This is mentioned merely as an example ; that in other cases also the adjustment must be made according to the tenour of the agreement, may be easily inferred by the reader himself.

SHALL the surety, *thus becoming* a creditor, recover what has been paid by him to the *original* creditor in consequence of the debt remaining undischarged by the debtor though living, but insolvent, dishonest or the like ?

#### CLX.

VRĪHASPATI ordains :—SHOULD a surety, being harassed, pay the debt, for which he was bound, he shall receive twice the sum from the debtor after the lapse of a month and a half.

" A SURETY ;" a person, who has become bound *for another*. " Being harassed ;"

in the present instance the consequence might be inconsistent with reason. It cannot be true, that the son of him, who, having received effects worth ten pieces of money, became surety for a debt of five pieces, shall pay the debt without interest. If a chattel of small value have been received as a pledge, then only shall the debt be discharged without interest, but when valuable effects have been received, why should payment be accepted without interest, while the assets are sufficient for the *whole* debt? The debt must therefore be discharged with interest, and the surety must restore the surplus, if there be any, to the debtor or his family

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VRĪHASPATI ordains :—SHOULD a surety, being harassed, pay the debt, for which he was bound, he shall receive twice the sum from the debtor after the lapse of a month and a half.

" A SURETY ;" a person, who has become bound *for another*. " Being harassed ;"

harassed, being adjudged by the arbitrators to pay the debt, *n tlu farr*,  
 “ since he became surety for that man, he must pay the debt to the creditor.”  
 “ After the lapse of three fortnights *or a month and a half*, after forty five  
 days A debt of one hundred *suvernas*, having accumulated with interest  
 to two hundred *suvernas*, is again doubled and amounts therefore to four hun-  
 dred *suvernas*, that sum he shall receive from the debtor The cause of  
 doubling the debt is the offence committed in not immediately paying it.

## CLXI

VISHNU and NĀREDA — If the surety, being harassed by the  
 creditor, discharge the debt, the debtor shall pay twice as  
 much to the surety.

## CLXII

YĀJNYAWALCYA — When the surety is compelled to pay a  
 notorious debt to the creditor, the debtor shall be forced  
 to repay double the sum to the surety.

“ NOTORIOUS,” adjudged by arbitrators “ Notorious ” should be un-  
 derstood in the text of VISHNU and NĀREDA, for it has the same import  
 with the text of YĀJNYAWALCYA VRIHASPATI renders the meaning  
 evident

## CLXIII

VRIHASPATI — If dull *sureties* innocently pay the debt,  
 when unbidden, or when required to pay another debt,  
 how and from whom can they recover the sum ?

“ DULL,” whose understanding is sluggish, being slow even in their  
 own affairs, it is *perceived*, that their minds are heavy “ Innocently,”  
 without guile “ Unbidden ” by the umpire

The Retracara

THE meaning is, not told by arbitrators, “ pay the sum to that man ”  
 Here “ unbidden by arbitrators ” also implies, that it is not any how  
 proved

proved by witnesses, that the debt should be paid by the surety. Accordingly YA'JNYAWALCYA says "notorious," that is, not unbidden by arbitrators. So.

## CLXIV.

CA'TYA'YANA:—THE surety shall *immediately* receive from the debtor, *but without interest*, the sum which he has paid, when legally urged by the creditor, on proving the case by witnesses.

ON proof by witnesses, that the debt ought to be paid. "Urged by the creditor," mentioned as a matter of course; for payment would hardly be made by one who was not urged. From the expression, "he shall receive the sum," it appears, that the surety shall receive so much only as was paid by him to the creditor, and not double that sum. But the double sum has been directed by the text of YA'JNYAWALCYA; there is consequently an inconsistency. It must therefore be settled, that within a month and a half he can only receive the exact sum paid, but after a month and a half he shall receive twice that sum. In this case, however, there is no reference to the period in which a debt is regularly doubled, such as fifty months and the like, for no such law exists; the expiration of a month and a half is alone a sufficient term, under the text of VRĪHASPATI (CLX), to double the sum. Such is the best mode of interpretation approved in the *Retnācara*.

GRAHĒŚWARA and MISRA explain the text of CA'TYA'YANA as intending only the following case; a considerable space of time having elapsed beyond the stipulated term, if the creditor resolve on recuring to the king, but the surety, apprehending punishment, pacify the creditor at a pecuniary expense, and discharge the debt, the surety shall in that case recover from the debtor the money employed in appeasing the creditor; but shall only receive back the exact sum, not twice the amount. But the author of the *Mitācśarā* says, twice the sum must be immediately paid. He holds, that the lapse of a month and a half is not required. To reconcile the text of VRĪHASPATI, money expended in appeasing the creditor must be supposed. On this subject YA'JNYAWALCYA propounds a distinction,



## CLXV

YĀJNYAWALKYA.—FEMALE slaves and cattle delivered by a surety must be made good with their offspring, grain shall only be repaid two fold, cloth is declared to be quadrupled, and liquids octupled.

“FEMALE slaves and cattle,” a debt consisting of female slaves or cattle If a surety be compelled by a creditor to deliver female slaves, goats, and the like, they shall be received back by the surety with their offspring only but grain and the rest with the accumulation mentioned Other things can only be doubled

The *Dipacalica*

THE doubling of every kind of property having been suggested, it is here directed by a special law, that liquids shall be repaid octuple, cloth quadruple, and female slaves or cattle with their offspring that is, with no other recompense but their offspring If one female goat, having been lent, be made good by the surety in consequence of the debtor being unable to discharge the debt, then, after the lapse of considerable time, the debtor being able to discharge the debt one female goat shall be delivered to the surety, and as many kids as have been produced from that first goat If that female goat die *unproductive*, the debtor must afterwards deliver a single goat, and no kids, for none have been produced Grain and the rest;” grain, cloth and liquids “Other things gold and the like The gloss of the *Dipacalica* may be taken in a literal sense

HERE an observation should be made When the surety would have been liable for the payment of the debt in consequence of the debtor's absence, if the surety be dead, it shall be paid by his son alone, and without interest, as has been mentioned Afterwards, when the debtor is amenable for the payment of the debt, it is reasonable, that he should pay to the son of the surety twice the amount of the original sum paid by him without interest Must that debtor again pay the *arrear of* interest to the creditor, or not? On this question some remark, that the principal sum only, and no interest, has been received from the son of the surety. the interest shall therefore

therefore be recovered from the debtor ; for it is inconsistent with reason, that the creditor should sustain a loss without any fault on his part. But others say, that interest need not in that case be paid by the debtor, since no law directs it. Is not the general law, which ordains interest at the rate of an eightieth part, applicable to this case ? No ; for that is precluded by the text of *CAṬYAṆA* (CLVIII), the terms of which are expounded “ void of interest :” since, if interest were payable by any person whomsoever, it could not be void of interest. Of these two opinions, preferring that which is best and most firmly established, a single rule of decision should be adopted.

ON this text (CLXV) the *Mitácsharā* has this comment : that kind of property, for which a special *recompense* or rate of interest has been propounded, being paid by a surety, the debtor must immediately make it good, without any reference to particular periods, but with the interest propounded : such is the implied sense. The author conceived, that interest is propounded by the text on female slaves, cattle, and the like ; now there can be no interest without a loan, as has been already stated ; but female slaves and cattle may be lent by one, who is unable to maintain them himself, and wishes they should be supported : this text intends only such a loan.

## CHAPTER V.

### ON THE PAYMENT OF DEBTS.

A DEBT of such a kind should be paid ; a debt of such a kind should not be paid ; it should be paid by this heir ; it should be paid at this time ; it should be paid in this mode : thus the subject is five fold in respect of the debtor. It is two fold in respect of the creditor, namely the rule for delivery, and the rule for receipt. Of these seven topicks of loans and payment, one topick, the rule for delivery by the creditor, has been expounded. Explaining the verb "give" or deliver in the sense of payment, the other six topicks are expounded in *the two following chapters*. Such is the method authorized by the *Mitācsharā*.

#### CLXVI.

VRĪHASPATI:—BY whom, to whom, and in what mode, should, or should not, be paid a loan, which has been received from the hands of another in the form of a loan on interest, shall be now declared :

2. If the time of payment be not expressed, the debt shall be paid on demand *with the interest then due ; if expressed, at the full time limited ; and if not previously demanded, when interest ceases on becoming equal to the principal* : if the father should die *in debt*, it shall be paid by his sons *with interest as far as the law allows*.

BY the text of NĀREDA (I) the forensick term of "loans and payment" is stated as comprehending twenty topicks in respect of the creditor and debtor.

debtor \* The verb "give" or deliver has consequently the double sense of lend and pay. The topics suggested by the verb taken in its sense of "lend" namely the eight fold rule for delivery by the creditor (interest and the rest), and the rule for receipt by the debtor (stipulated interest and the delivery of the interest promised and so forth), which constitute ten topics of loan and payment, have been directly or virtually expounded. The topics suggested by the verb taken in its sense of "pay," are now propounded, namely the eight fold rule for payment by the debtor and the rule for receipt by the creditor, which also constitute ten topics of loan and payment.

"FROM the hands of another," from the hands of the lender. "In the form of a loan on interest," with declaration, "that shall be repaid with interest by me to him" the construction is, 'the debt which had been received in this manner.' By what debtor that should, or should not, be repaid, to what creditor it should, or should not be paid; and how or in what form it should, or should not be paid. Again, imagining the word "what," the topics of what should or should not, be paid, may be understood, as in one reading of the text of NĀRADA (I)

"It shall be now declared," this signifying 'almost at the present time,' expresses, that it shall be forthwith declared. The sage proceeds to the rule for payment (CLXVI 2) that debt, which has been received for no stipulated term, must be repaid on demand, that is, on a simple demand. Consequently for that loan which has been received on requesting it in this simple form 'lend me the sum' the rule of payment is such, that no delay must be made when the debtor is told "pay the debt."

WHEN it is settled by both parties that the will of the creditor shall regulate the time of payment, the debt must be paid on a simple demand; but, when another term has been fixed, it must be paid at the full time limited.

MISRA

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\* For what { what may be lent  
 { what time shall be lent  
 { what time shall be paid  
 { what need not be paid } to whom { } in what form  
 { by the creditor { } by the debtor

AND

AND BHAVADEVĀ says, when *a time* has been settled by both parties, as the period of payment, or *when the debt has been made payable* at the option of the creditor, &c. In this gloss, the words “specifick time” must be supplied. To both these opinions it may be objected, that the subsequent phrase “at the full time limited” would be a needless repetition. But that phrase concerns a debt, for which a time of payment has been fixed. Consequently, for that loan, which has been received on application made in this form, “I will pay the debt within two years, lend me the sum *required*,” the rule of payment is such, that no delay must be made, when that period is complete. But, when a loan has been received on a simple request in this form, “lend me the sum *required*,” and the creditor meanwhile has not demanded it, what should be done? The sage adds, “when the interest ceases,” now interest ceases on the debt after the lapse of time sufficient to double it, as has been already mentioned: that it must be then paid, is the rule of payment for such debts. This and other points may be argued.

It has been thus explained, that the very person, who contracted the debt, must discharge it. But in the case of his death, the sage adds, “if the father should die *in debt*, it must be paid by his sons.” On failure of the father, who contracted the debt, that is, if he die, or be secluded from the world, or go to a foreign country, the debt must be paid by his sons with interest. It must be paid even by his son’s son *but* without interest.

## CLXVII.

VRĪHASPATI: — THE father’s debt must be first paid, and next a debt contracted by the man himself; *but* the debt of the paternal grandfather must even be paid before either of those.

2. THE sons must pay the debt of their father, when proved, as if it were their own, or *with interest*; the son’s son must pay the debt of his grandfather, *but* without interest; and

his son, or the great grandson, shall not be compelled to discharge it, *unless he be heir, and have assets.\**

FIRST the debt of the grandfather *should be discharged*, next the debt of the father, and lastly the debt contracted by the man himself such is the legal order of payment. "As if it were their own," as their own debts are paid with interest, so must this be paid with interest "When proved," when established by the testimony of witnesses But the debt of a grandfather may be discharged without interest "His son," the grandson's son, readily suggested by the preceding term, is thence understood Consequently the great grandson shall not be compelled against his will to discharge the debt of his great grandfather; but, if the great grandson be willing, it may be discharged by him.

#### CLXVIII.

VISHNU:—If he, who contracted the debt, should die, or become a religious anchorite, or remain abroad for twenty years, that debt shall be discharged by his sons or grandsons, but not by remoter descendants against their will.

"TWENTY years" are connected in the sentence with absence in a foreign country "Not by remoter descendants," not beyond the third generation *inclusively* it need not be paid by the fourth in descent and so forth "Against their will," but if they wish well to a great grandfather or other remoter ancestor, the debts even of such ancestors should be paid by the fourth in descent and so forth

*The Retnākars*

CIVIL and natural death being in effect equal, a lapse of time cannot properly be required, therefore the commentator says, the construction refers twenty years to the case of absence in a foreign country "If they wish well to an ancestor," since the non payment of a debt is declared a crime in the

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\* VISHNU who holds that son and grandson are under a moral and religious, not a civil, obligation to pay the debt, if they can, but assets may be followed in the hands of any representative Note by 'U WILLIAM JONES.

third degree, by a text of *MENU*\*, the great grandfather suffers torment in a region of horror if his debt remain undischarged; to prevent that, is a benefit to the great grandfather; when they wish this benefit to him, they must pay the debt. In like manner, the debt contracted even by a son or other descendant may be discharged by the parent, if he be willing.

*THAT*, which affords no gain or permanence of capital, is not a debt†; and if this be not repaid by any person, it is *consequently* no debt: how then can torment in a region of horror be the consequence of its remaining undischarged? It should not be objected, that the text must therefore be unmeaning, since the law only suggests torment in a region of horror, should the debt be not discharged by those, whom the law declares indispensably bound to pay the debt. This argument is ill founded, since the great grandfather was himself bound for the indispensable payment of the debt, and the word expressive of cause, in the definition of debt (II), there signifies a circumstance only, *not an efficient cause*.

If the father die, his debts must be paid by his sons, as abovementioned; this *NĀREDA* declares with special distinctions.

#### CLXIX.

*NĀREDA*:—A FATHER being dead, his sons, whether after partition or before it, shall discharge his debt in proportion to their shares; or that son alone, who has taken the burden upon himself.

“*BEING* dead;” having deceased, or having retired from worldly affairs: this also suggests long absence, as expressly stated in the rule of *VISHNU* (CLXVIII). “In proportion to their shares;” whether after partition or before it: such is the meaning. Consequently, after partition, sons must discharge the debt at its full term, whether known or unknown when partition was made, in proportion to their shares. But, if they be undivided, they shall pay it out of the common property. However, if the eldest brother, or any other brother skilful in business, superintend

\* See *MENU*, Chapter 11, v. 65.

† See the definition of loan or debt at v. II.

the affairs of the family like a father, he must discharge the paternal debt out of the common stock. In effect there is no difference in the two cases. This distinction may nevertheless be understood, by the first part of *the text* it is suggested, that, if all the brothers be similarly circumstanced, all, or any one of them as substitute for the rest, may be impleaded, but, if any one brother have taken the burden upon himself, he alone is impleadable.

OR the phrase, " that son alone who has taken the burden upon himself," may be thus expounded, when the other sons reside at various places, and one son occupies his father's abode and enjoys his father's property, he alone bears the burden, namely the load *formerly* borne by his father, and therefore he must also pay his father's debts. for MISRA says, ' when any one of the sons is installed in the place of his father, he alone *must pay the debt* ' and *he must pay it* because he has taken the heritage. So must two or more *brothers*, who have taken the burden upon themselves, for the term " that son," *though* expressed in the singular number, must be taken indefinitely.

AGAIN, if any one of the sons declare, " I will neither receive *my share* of my father's property, nor pay his debts," and the others assent to that *arrangement*, in that case, those only, who have accepted the father's estate with his debts, shall discharge the debts of their father. This also is intended by the expression, " that son alone, who has taken the burden upon himself " Or the expression, " whether after partition or before it," may be explained, whether *separated from their father* or not separated, and the particle may be taken in a determinate sense. If there be undivided sons, they alone must discharge the debt, or on failure of them, the divided sons. This interpretation should be admitted.

#### CLXX.

YĀJÑAWALCYA —THE father being gone to a foreign country, or deceased *naturally or civilly*, or wholly immersed in vices, the sons, or their sons, must pay the debt, but, if disputed, it must be proved by witnesses

" BEING



“ BEING gone to a foreign country ;” having gone to a distant abode in a foreign country, and not returning within twenty years : for it coincides with the rule of VISHNU (CLXVIII), and the text which will be cited from NĀREDA (CLXXV). Seclusion from the world or civil death must also be understood. “ Deceased ;” meaning natural demise.

“ WHOLLY immersed in vices ;” the term (*vyāsana*) is explained by lexicographers, ‘ danger, disease, or calamity ; falling low, vice originating in lust or wrath.’ \* Consequently, the father being involved in distress, that is, being afflicted with a hopeless distemper, or long confined in fetters by the king in consequence of the offence of another ; or fallen from his class, as a degraded person or the like, and excluded from the patrimony ; or immersed in vices originating from *irregular* desires, (whether avarice, lust, or any impulse of the mind,) such as gaming or the like, and love of harlots ; or immersed in vices originating from a wrathful temper, or governed by pride ; *in all these cases the son must pay the debt.* For instance ; the father, behaving with insolent pride, says, “ I will not pay the debt, the creditor may take what measures he pleases ;” in such a case, the son should pay the debt, lest he fail in duty to his father, out of any possible funds, either the paternal wealth or other property : but on failure of sons, the debt should be discharged by the son’s son. However, the debt may be paid by the son’s son without interest, as abovementioned : the case is the same. CHANDESWARA has briefly said, should the father be unable to pay the debt, it must be discharged by his son, or, on failure of sons by his grandson.

THE son does not know, that his father had contracted a debt from that man ; or he knows it, but conceals his knowledge ; in these cases “ it must be declared by witnesses :” it must be established by the evidence of witnesses. But on the reading approved by MISRA (*śācśbi bhāvītam* instead of *śācśbi bhāśītam*) the *literal* sense is “ proved by witnesses.”

THE father, who contracted the debt, being absent, or dead, or addicted to gaming, to *frequentation of harlots and the like*, or (under the suggestion of the particle “ or” taken in a large sense) afflicted with an incurable distemper

\* AMARA SINGHA, on words with many senses,

or the like, or degraded, his debts must be paid by his son, or, on failure of him, by his son's son, but, if disputed, the debt must be proved by oral or other *sufficient* testimony

*The Dīpālikā.*

THE word "witnesses," standing in the text, is supposed in the *Dīpālikā* to intend also written evidence and the like. Here the debt has remained undischarged in consequence of degradation, because the degraded person held not the patrimony, not because he is *equally* incapable of paying debts as of performing religious rites. It must be paid by his son to rescue him from a region of torment. But according to RAGHUNANDANA and others, an outcast is only incapable of property, so long as he be averse from the *necessary* penance.

MUST a debt, contracted by a man who has no assets, be paid after his death by his son or grandson? On this question it is said, even in such a case the debt contracted by him ought to be paid by his son, or, on failure of sons, by the grandson, for, commenting on the following text, it is said in the *Dīpālikā*, the son, who is capable of inheriting the estate not being blind nor otherwise disqualified but who has not received assets left by the father, *is meant*, not one who has taken the father's estate, for he is suggested by the expression, "who has received the estate" and it is mentioned in the *Mitācśhara* that the son or grandson may be compelled to pay the debt, even if no assets have been received and it is stated in the *Retnacāra*, that a son capable of inheriting the paternal estate, not being blind or otherwise disqualified, is here designed, not one who has received assets left by the father, for he is suggested by the expression, "who has received the estate."

#### CLXXI

YAJNYAWALKYA.—HE, who has received the estate of a proprietor leaving no son *capable of business*, must pay the debts of the estate, or, on failure of him, the person who takes the wife of the deceased, but not the son, whose father's assets are held by another.

THE order, in which persons are liable for debts, is therefore as follows: in the first place the debtor himself; on failure of him, his son competent *to inherit and manage the estate*; on failure of such, the son's son; if there be no *such grandson*, the great grandson, wife, uncle or other heir, who has succeeded to the estate, or the brother or other guardian of it; should there be no such person, he, who has taken the widow; if there be none such, a son incompetent *to inherit or to manage the estate*. So the *Ghrintāmenī*, *Retnācara*, *Dīpacalīcā* and the rest. However the obligation on an *incompetent* grandson to pay the debt is not noticed in those works under this head. This point shall be discussed. On failure of him, the great grandson or remoter descendant, who has not received property left by his ancestor, may pay the debt if he be willing, but not otherwise. Such is our opinion. It should be affirmed, since it is positively said in the *Dīpacalīcā*, 'uncles and other kinsmen, capable of taking the heritage of one who leaves no issue, *must pay the debt*.'

THAT the debtor is bound to pay the debt appears from many texts (CLXVI 2 &c.); that, on failure of him, his son, if competent, *must pay the debt*, appears from the latter part of the text quoted (CLXVI 2) and from other texts; on failure of him, the son's son if competent (CLXX); on failure of him, the great grandson or other representative who has received assets (CLXXI): and the text *YĀJNYAWALKYA* just cited is thus explained: of a debtor, who leaves no competent son but had assets for the payment of his debts, he, who succeeds to the estate, *must pay the debts*. On failure of him, the person who has taken the widow: and not, if either of those be *amenable*, a son, while the assets are held by another, or when the assets left by his father have been transferred from him to another. How can the assets be held by another notwithstanding the existence of a son? The son may be disqualified, having been born blind, deaf, or the like; or he may be incompetent by reason of disease, minority or the like: and the author of the *Mitācśbarā* remarks, that the assets may be held by another notwithstanding the existence of a vicious son (Book V, v. CCCXVI).

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THE text is read, *putrō nāryāśritadravyah*, not the son, whose father's assets are held by another, instead of *putrō nanyāśritadravyah*, the son, whose father's

*father's* assets are not held by any other; if the assets be held by another, although the son be living, that son is not liable for the payment of his father's debts. It is stated in the *Retnācara*, that this *part of the sentence* is connected with the phrase "must pay the debt;" the construction therefore is, the son shall not be compelled to pay the debt while the assets are held by another. Such is the intention of that gloss.

If no person have taken the widow, the incompetent son must pay the debt.

## CLXXII.

NA' REDA:—OF the successor to the estate, the guardian of the widow, and the son *not competent to the management of affairs*, he, who takes the assets, becomes liable for the debts; the son, *though incompetent, must pay the debt* if there be no guardian of the widow, nor a successor to the estate; and the person, who took the widow, if there be no successor to the estate, nor *competent son*.

THIS text may be thus interpreted; whoever takes the assets, whether he be *the regular* successor to the estate, guardian of the wife, or son *of the deceased* but incompetent *to the management of affairs*, is successor to the estate and must pay the debts. It is so expounded in the *Retnācara* and other works. Its object has been already stated. "If there be no guardian of the widow &c.;" if no person have the care of the widow or of the estate, if none take the widow or the estate; the son, that is, the incompetent son, must pay the debt. This, however, intends only a case where he may be justly liable, namely a case of incompetency arising from minority or the like; for no one has said, that a son *born blind*, or otherwise *excluded from inheritance*, shall pay the debts. "And the guardian of the widow;" should there be no successor to the estate, nor competent son, the guardian of the widow is liable for the debts. The object of this has also been already explained.

We hold, that great grandsons are *only* liable for the payment of debts, *if*  
willing

Not driven to a foreign country by the oppression of the king or the like, is implied in the phrase, "involved in no distress" "Capable of property," not born blind, deaf, or the like "Liable to bear the burden," not a minor or the like. If there be such a son, him the judge shall compel to pay the debt. But if the son be afflicted with disease, or be an infant, or if he be involved in distress, or blind from his birth, and so forth, and if another person be found to have received the assets, from that person alone shall the judge enforce payment. If there be none such, from the person who has taken the widow. Such is the sense of the text. Here "afflicted with disease" is merely an instance. Therefore, should a man die childless, the same rule should be adduced.

## CLXXIV

VRIHASPATI —THE successor to the estate is liable for the debt, if the son be involved in distress, but the person, who takes the widow, shall be liable for the debt, on failure of successors to the estate.

THE sense of the text is obvious. Let it not be objected\*, as inconsistent with reason that on this construction, one would take the assets of the deceased, and another pay his debts. Inconsistency with reason may not be objected to that, in which sages and authors concur. In fact, when there is a competent son, no other can be *the legal successor* to the estate. In the case stated, why does he not obtain his own father's estate from his uncle and coparcener? If he voluntarily yield it to his uncle, that uncle is not the successor to the estate *of the deceased*, but the occupant of property given by the son. It is the same in the *supposed* case of a sister. Consequently there is no occasion for a special text on this point, the son must pay the debts in consequence of his own voluntary act. But if the uncles or the rest forcibly withhold the assets the king shall compel the delivery. If through any accident that cannot be done, he must enforce payment from the uncle and the rest for the assets of the father make *the holder of them* liable for the payment of his debts.

\* The author refutes the argument introduced by the quotation of the texts clxxi and cxxiv.

CONSEQUENTLY the intention of the texts of YAJNYAWALKYA and the rest is this, after the decease of the debtor, if he left no assets, or if there be assets which have devolved on the son, the debt must in either case be paid by the son, agreeably to the order of payment propounded by NAREDA (CLXIX) If there be no son, it must be paid by the son's son; and here also the order of payment propounded by NAREDA must be assumed from parity of reasoning. If there be neither a son nor a son's son, or if there be a son or grandson, to whom the assets have not descended, but are held by some other person, the debt must be paid by him who has received the assets, on failure of such, by him who has taken the widow; or, on failure of him, by the son or grandson, who was competent to take the heritage. But an incompetent grandson is not liable for the payment of debts, any more than an incompetent son.

THE text of YAJNYAWALKYA is read *putro'nanyasritadrayah* the son, whose *father's* assets are not held by another and that reading is approved by MISRA and VIJNYANESWARA. Under the expression, "whose *father's* assets are not held by another," may be understood one who has taken his father's assets, as well as one, whose father had no assets. The difference between the two interpretations consists in this, if a son through generosity or the like, do not exact his father's property from his uncles and the rest, he must pay the debt *according to one opinion*, and need not pay *it according to the other*, as is evident. The preferable interpretation may be determined by the wife, but ultimately one only can be admitted.

OR, if a solvent person contract a debt and die, and his son be a minor or be gone to a foreign country, and his uncle or other *kinsman*, or some stranger, through tenderness for that son, take care of the estate, such person alone may be understood from the expressions, "he who has received the estate of a proprietor," "the successor to the estate," and "a person who has taken the assets." As the guardian recovers money due from others to the estate, so must he pay the debts out of the estate. But if there be no assets, or if no such person take care of the estate, the person, who has taken the widow, must discharge the debt. If no widow be left, or if a widow survive but no person take *the guardianship* of her, the son

son or the son's son, in order, should pay the debt, acquiring funds by any practicable means. If there be neither son nor grandson, and if no person take the widow, or if no widow survive, and if the great grandson or remoter descendant, or the brother or other *collateral relation*, take the property left by the deceased, he should discharge the debt. Such is the sense of the text of *YAJÑAWALKYA*. Accordingly it is said in the *Dipacalica*, the uncles or other *collateral heirs* of the deceased who leaves property. This should be admitted as *an accurate interpretation*. Both are suggested by the ambiguous terms of the texts.

ALL authors concur in opinion, that a son, being blind or deaf from his birth or the like, shall on no account be liable for the payment of debts. But, according to the *Dipacalica*, the debt should be paid by an incompetent son, if no person have taken the widow. The word "incompetent" intends such disqualification as is stated by *CAṬYĀṬĪANA*, disease and the like (CLXXIII). But the author of the *Mitacshara* states two cases: a son, grandson, or any other person, who has taken the assets, must discharge the debt, on failure of such, he, who has taken the widow, on failure of him, any son not *born* blind or the like; and on failure of him, the great grandson or other representative who takes the heritage: they are again mentioned to show the positive obligation of paying debts then only, when they have received assets. Or the person, who takes the widow, that is, who takes a widow falling under the fourth description of women: wilfully libidinous, or the first of twice married women,\* becomes liable to the payment of debts on failure of successors to the estate, if there be no such person, the son, who would have been competent to receive the heritage, not being blind *from his birth* or the like; on failure of him, any person who has taken the widow *must pay the debt*, under the text of *NA REDA* (CCXXII).

THESE rules of decision shall be successively discussed. In the first place, if the father die, or reside abroad or the like, the competent son is liable for the payment of his debts. Natural decease, and *civil demise or retirement* in

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\* v. CCXX and Book IV, v. CLVIII : & c.

the order of devotion, are similar. Concerning absence in a foreign country, the rule of VISHNU above cited (CLXVIII) propounds a distinction.

#### CLXXV.

NĀREDA: — THE father, or, *if the family be undivided*, the uncle or the elder brother, having travelled to a foreign country, the son shall not be forced to discharge the debt, until twenty years have elapsed.

HERE the mention of "uncle or elder brother" intends the payment of debts contracted by them, and that must be understood in the order above-mentioned, when there is any sufficient cause, such as the uncle or brother leaving no son. Its further application will be mentioned. The particle "or," repeated in the text, is indefinite, comprehending all persons holding assets of the debtor.

#### CLXXVI.

CA'TYA'YANA: — IF the father be at home, but afflicted with a chronick disorder, *though not without hope of recovery*, or live in a foreign land, *but expected in time to return*, his debt shall be paid by his sons after a lapse of twenty years.

"TWENTY years," after a lapse of twenty years, for the text coincides with that of NĀREDA (CLXXV). And this must be understood when the cure of the disease is possible, or when the return of the absent parent may be expected. But, when the distemper is deemed incurable, or the return of the absent parent is impracticable, the son shall pay the debt of his father, though living, as if he were dead. The creditor need not wait twenty years.

The Retnācara.

OR the expression used in the text, "if the father be at home," may signify, if he be living, that is, if it be ascertained, that he is alive. Hence, if no intelligence be received, during twelve years, concerning any man who has travelled to a foreign country, the law requires his son to perform obsequies and the like, presuming his death, if the son did not then pay the debt until



twenty years had elapsed, that would be inconsistent with common sense and with the reason of the law. The following text of CATYĀYANA is authority for this position.

## CLXXVII

CATYĀYANA —A CREDITOR may enforce payment of such debts from the sons of his debtors, who, though alive, are incurably diseased, mad, or extremely aged, or have been very long in a foreign country, *provided their sons have assets of the debtor.*

BOTH “diseased” and “mad” are here mentioned by the same rule by which two names for kine are used, the one in a generic sense, the other in a particular sense, or to include insanity or intoxication arising from the use of drugs or the like. “Extremely aged,” incapacitated by old age for *the management of affairs*. “Very long in a foreign country,” and not expected to return. “Such” or of this kind, an epithet of debt intended to exclude debts contracted for spirituous liquors and the like. This will be subsequently explained. Here, from the concurrence of the preceding text (CLXXVI) it appears, that the creditor need not wait twenty years, for the expression “very long in a foreign country” would be superfluous, the sense would be the same with the preceding text, and there would be a needless repetition.

## CLXXVIII

VRĪHASPATI —A DEBT of the father being proved, it must be discharged by his sons, even in his lifetime, if he were blind or deaf from his birth, or be degraded, insane, or afflicted with a phthisis or leprosy, or other hopeless disorder.

“BLIND from his birth” born blind. For the word *jati* signifies both class and birth. “Degraded” must be understood of one who is averse from *the necessary* penance. “Phthisis, or leprosy, or other disorder;” this is illustrative of any incurable disease. The Retinācarā

“PHTHISIS or marasmus” when a father has been twenty years afflicted with

with any disease whatsoever, his debt must be discharged by his son; the amplified gloss "phthisis, leprosy, or other incurable or hopeless disorder," would therefore be unmeaning; hence the interpretation suggested in the *Retnâcara*, that in the case of phthisis or the like, the creditor need not wait twenty years, should be admitted. VA'CHESPATI MISRA and others concur in this exposition. But the *Pârijâta* and MISRA add, if the father, through indigence, be *wholly* unable to discharge the debt, it must be paid, even though the family be divided, by his son who is able to discharge it, or on failure of him, it is reasonable, *that it should be paid* by his grandson so circumstanced. Since the father being born blind was incapable of inheriting his own father's estate, and is unable to acquire property himself, he may be considered almost *literally* as moneyless.

"EVEN though the family be divided;" even though his father be separated: *the debt must be paid* by a son, whose father is separated from his own brothers and the rest. Or it may be explained, 'by a son who is separated from his uncles and the rest;' for no distinction is expressed.

THE first case shall be now considered.

#### CLXXIX.

VRĪHASPATI:—A SON, born before-partition, has no claim on the paternal estate, nor a son born after it, on the portion of his brother, whether in respect of property or debts; nor have they any claims on each other except to purification and an oblation of water, *if either of them die*.\*

A SON, born before partition, has no concern with the debts contracted, or property acquired, by his father after partition; he is incapable of taking the estate and paying the debts: and the son, born after partition, has no concern with the portion of his brothers; *that is*, with the debts undertaken by his brothers, and the property received by them on partition. But all are qualified for purification and oblations of water. By this text so explained it is cursorily intimated, that a son need not pay a debt contracted after partition. Still,

however, if the father be unable to discharge the debt, and there be no son in coparcenary *with him* able to discharge it, that debt must be paid by *another* son, who is able to discharge it, even though he be separated from the family (CLXIX). But if there be no son amenable *for the debt*, it must be paid, even though the family be divided, by a grandson who is competent *to the inheritance and management of the estate*. Although the text of YA'JÑA-WALCYA, which directs generally, that the debt should be discharged by the son or by the son's son (CLXX), may be expounded as relating to a grandson not separated from his coheirs still, if either the son or grandson, who are thus placed on a similar footing, may be liable for the debts even after partition, is it not reasonable to affirm the same in respect of the other? That is actually expressed in the *Parijata*, "it is reasonable" &c. and that part of the sentence relates to the grandson. Thus may the law be concisely expounded.

SHOULD the father die, or enter into an order of devotion, or be long absent in a foreign country whence his return cannot be expected, or be afflicted with a hop-1-s disorder, or be blind from his birth, the debt must be immediately discharged by his son competent *to inherit and manage the estate*, but, if he be long absent in a foreign land, whence his return may be expected and so forth, it must be paid after the lapse of twenty years. If the father, having been born blind, was excluded from the patrimony, and the son be capable of inheritance and be not separated from his father, it must be paid by that son out of his own property. But, if such a father were nevertheless able to acquire property, it must be then paid out of the property acquired by him: this is demonstrably true. If there be two sons both able to discharge the debts, and one be not separated, and the other be separated, it must be paid by that son only, who is able to discharge the debts and lives in coparcenary (CLXXIX). It is the same in the case of reunion *after separation*, by parity of reasoning. But, if the son, who lives in coparcenary, be unable to pay the debt, or if there be none such, the debt must be paid by the son able to discharge it, even though he be separated from the family, on failure of him, by all the grandsons in the male line, who are able to discharge it, not singly by the son of him who was born after partition. But, should the debtor have assets, then, while he lives, it must

must be paid by his son or grandson out of his property only, after his death, his effects descend, on failure of sons born after partition, to the other sons, or to all the grandsons of the male line, whose fathers are deceased, his debt must therefore be paid by them, out of his assets. In that case, since they have received assets, there is no difference between a son and a grandson. It is the same also in respect of the great grandson. On failure of *lineal male descendants* within the degree of great grandson, the heritage devolves on the widow and so forth, and the debts must also be paid by the widow or other heir in *the order of succession*. But, if there be no assets, the debt should in the first place be discharged by the son out of his own property, or, on failure of him, by all the grandsons of the male line, the great grandsons are under no necessity of paying the debt, as has been already noticed.

BUT, if there be a son born after partition, and the father die, and the sons, with whom partition was made, survive, but the son born after partition die leaving male issue, since he, who was born after partition, was alone entitled to the heritage of his parent, his son can alone claim the assets, not the sons born before partition, nor their offspring hence the debt shall not be discharged by them, but shall be paid in succession, or jointly, by the son born after partition and by his son, whether they have, or have not, assets of the debtor. Yet, should they be unable to discharge the debt, *the rule of payment* must be understood as before.

BUT, should a son, separated from his father, make a partition with his own sons of the property acquired by himself, and, bringing the remainder of his estate, live reunited with his father, and other sons be born to him, should his father die, and afterwards he also de cease, his sons, as well those born before, as those born after, partition, shall equally share the property and pay the debts of their grandfather, but the sons born after partition shall alone take the property and pay the debts of their father. Thus may the law be concisely stated. This method should be followed in all cases, the subject will be fully considered under the title of inheritance.

SINCE the text of YAJNYAWALKYA (CLXX) does not express, *that the debt shall be paid in succession by the sons or by their sons*, may it not be well asserted, that the debt must be discharged jointly by sons and grandsons? No,

for VRISHASPATI, ordaining that the debt shall be paid without interest by a grandson, shows a less obligation on the grandson than on the son; it is therefore incongruous to affirm, *that debts should be paid jointly with the grandsons*. Accordingly the *Mitâcsharâ* expresses, on failure of the father, the son *shall pay his debt*; on failure of sons, the grandson.

BUT the author of the *Smṛitīśāra* adds, a debt, contracted after partition by the father or kinsman on his own sole account, must be paid by his son and the rest, if he be *long* absent in a foreign land: in this case only is the period of *twenty years* prescribed; not in the case of a debt contracted for the support of an undivided family or the like, for the parceners are also concerned in such a debt. They are equally bound *with* the single parcener, by whom they are sheltered. The precept is not grounded on a latent motive: hence, when payment is demanded in consequence only of the declaration or engagement of a single parcener, without any *offensible* cause for contracting the debt, then only is a lapse of time required by that precept; but a debt contracted for the support of the family must be paid before *that time elapse*, as ordained by another text of YĀJNYAWALCYA.

## CLXXX.

YĀJNYAWALCYA:—If one of *two or more parceners* or undivided kinsmen contract a debt for the support of his family, and either die or be very long absent abroad, the other parceners or joint-tenants shall pay it.

THE creditor need not wait a specifick time; for there is no authority for such a supposition: the time allowed solely concerns divided kinsmen.

MISRA.

“FAMILY” signifies all the persons entitled to maintenance. Since all the parceners are concerned in the debt, a lapse of time is not required: the gloss should be so interpreted from the preceding sentence. The meaning is, since all partake of the benefit arising from money borrowed by a single parcener, all are bound for the debt. “They are equally bound with the single parcener, by whom they are sheltered;” a single parcener, contracting debts

and

and so forth, supports all the persons entitled to maintenance : he is as it were their screen or umbrage, sheltering them from ardent distress. Consequently whatever is done by him, may be justly considered as the act of all ; and all being legally bound for the debt, it is deemed a debt actually contracted by those among them, who are forthcoming : it is therefore improper to require a lapse of time.

MUST not the *literal* sense of the text be preserved, even though it be inconsistent with the reason of the law ; else a sin would be committed by deviating from the precepts of sages ? This position may therefore be thus reconciled : when a sin is stated in deviating from the precepts of sages, that intends a precept, the grounds of which are not apparent ; but this is a precept of demonstrable law founded on reasoning : such is the notion adopted in the *Smṛitīśara*.

“ HENCE, when payment *is demanded* &c. ;” payment must be made in consequence of an engagement common to all the parceners ; the creditors may have lent the money to any one of them ; it was not necessary, that such an engagement should be expressly declared when the debt was contracted : such is the sense of *the gloss*. Or that *gloss* may be thus interpreted : payment must be made in consequence of one, that is a single, declaration or text of sages, or in other words a text independent of reasoning, such as the following text ; even without a cause of payment arising from the *joint* receipt of the loan, that is, without the payer’s having been concerned in the receipt of the loan, or having enjoyed *the benefit* of it or the like, payment must be made ; so interpreted by reference to the preceding phrase. In the last case only is a lapse of time required by the texts of sages. But a debt, contracted for the support of the family, excluded from the purport of the preceding text, must be paid before the lapse of twenty years. This the commentator also notices.

“ PARCENERS or joint tenants” (CLXXX) ; heirs, such as brothers and the rest. “ For there is no authority &c. ;” for there is no expression in this text denoting, that the creditor should wait the lapse of time, nor does the reason of the law suggest it. It should not be objected, that a period of *suspension* may be deduced from the concurrence of the text above cited (CLXXV).

Since

Since it is proved from the reason of the law, that no delay should be allowed to sons and the rest living in coparcenary, there is no difficulty in restricting the text of NĀREDA to sons and others with whom partition has been made. Such is the notion adopted in the *Sr.śūfāra*: and that is proper; for, immediately after the text cited, NĀREDA thus proceeds,

## CLXXXI.

NĀREDA:—A DEBT contracted before partition by an uncle, or a brother, or a mother, for the support of the family, all the parceners or joint-tenants shall discharge. \*

IF it were intended, that an interval of suspension should also be understood in this case, the enunciation of the present text would be vain; for that sense was already conveyed by the preceding text (CLXXV). It is therefore evident, that the three texts of NĀREDA relate to distinct subjects, as follows: a father being dead, his sons shall discharge his debt (CLXIX); a debt must be paid, after the lapse of twenty years (CLXXV); a debt, contracted before partition by a father or kinsman for the support of the family, must be immediately paid (CLXXXI). This text, expressing "before partition" as well as "for the support of the family," cannot have the same import with that, which prescribes a time. But the first text (CLXIX) relates to a debt contracted by the father on his own sole account; in that case only is a lapse of time required.

BUT, says MISRA, CHANDĒSWARA holds, that a debt contracted before partition by a father or kinsman, who travels to a foreign land whence his return may be expected, must be paid by his son or other parcener, after waiting twenty years. This however has been hastily said; for, in fact, CHANDĒSWARA had declared in his own work, 'if that father were so circumstanced as to be incapable of participating in the patrimony, and his son be not separate in regard to property, his debt must be paid by the son; but if the father, though he be so circumstanced, have any several property, it shall be discharged by him alone. Yet, if the father be wholly unable, and the son be able, to discharge the debt, it shall be paid by the son.' Here the expression, "so

“circumstanced as to be incapable of participating in the *patrimony*,” describes the father as indigent in consequence of his exclusion from the patrimony. “Not separated in regard to property” relates to the son; it signifies residing together and partaking of the same food: the consequence is, that, if the father any how acquired wealth, it would be joint property. Such a father therefore contracts a debt for the support of his *own* family, and travels on account of his affairs to a foreign country, but his return may be expected; in such a case must his debt be paid by his son? And must it be paid after the lapse of twenty years, or within that period? On these questions the rule formerly mentioned must be adduced; for no distinction has been stated. Consequently it shall only be paid after the lapse of twenty years.

SINCE no time is specified in the text of VṚHASPATI (CLXXVIII), should not the debt of a man blind from his birth or the like be paid without waiting a lapse of time? However the law may be in that case, still, when a father is afflicted with a fever or similar disorder, and his son is not separated in regard to property, it appears from parity of reasoning, that the debt shall only be paid by his son after a lapse of twenty years; without distinguishing whether it were contracted for the support of his family, or for the borrower's own use. Such appears to be CHANDĒSWARA's notion.

ON this we remark, that, although no limitation have been expressed, there is no difficulty in restricting the text (CLXXV) to debts, which have been contracted on the borrower's sole account; for, as it does not express a debt contracted on his sole account, so likewise it does not express a debt contracted for the support of the family. However, even in that case it must be supposed, that payment cannot be expected *from the debtor himself* within ten or fifteen days. In fact it must only then be paid, when the burden devolves on the son. That virtually is the meaning.

VRĪHASPATI propounds a special rule in respect of undivided parceners.

## CLXXXII.

VRĪHASPATI:—A DEBT, contracted by the father acting for his coheirs, shall be all paid by the son, if the father have been



been long abroad ; but, if the father die, the son shall pay only the share of his father, and never that of another debtor.

FIVE brothers live together and partake of the same food, one, acting for all, contracts a debt on his own judgment, or with the consent of all, for the support of the family, and afterwards travels to a foreign country ; the other brothers are alive and incompetent *to the management of affairs*, or they are not living, and the absent brother has, or has not, made a partition with his brethren in such a case that debt must be paid by his son out of the common stock ; on failure of that, out of his proportionate share ; or, on failure of that again, out of his own *several* property.

“ A DEBT contracted by one acting for his coheirs,” since all are equally bound for that debt. Or it may be literally interpreted, contracted by one of the coheirs serving as umbrage to screen the others from ardent distress. Payment by the son is ordained, provided the father be living, but, if he die, the son shall only pay the share of his father and not the shares of his uncles and the rest. The meaning is this while he lives, the acts done by his son are in a manner done by the father himself, hence payment then made is on the part of the father consequently the debt contracted by the father alone is virtually paid by him alone, and a contribution of shares is not therefore proper in that case. But, when the father is deceased, the debt contracted by him, for the support of his own brothers and the rest, should, on failure of him who actually contracted the debt, be paid by those only, for the support of whom it was contracted this is clearly settled. That proportion of the debt, which was contracted by the father for the maintenance of his own immediate dependants, must be paid by his son ; not the shares of the rest he is exonerated by the law, because the burden had not yet devolved on the son, at the time when the debt was contracted.

In the *Tracts Chitturam* the text is read *pitramam*, the debt of his father, instead of *pitramam*, the share of his father. If that reading be admitted, it may still be expounded, the share of the father in the debt.

*ℳelled to pay the whole debt, but the son of one deceased need only pay his father's share.*

Of persons contracting a debt, for which they are jointly and severally bound, if one alone be found, he may be compelled to pay the whole debt, or if a son, whose father has been long absent abroad, be found, he also may be compelled to pay the whole, but if a son, whose father is dead, be found, he can only be compelled to pay his father's share, and not the whole sum.

## CLXXXV

VISHNU — A DEBT, contracted *jointly and severally* by parceners, shall be paid by any one of them, who is present and amenable, and so shall the debt of the father, by *any one of the brothers* before partition, but, after partition they shall severally pay according to their shares of the inheritance.

A DEBT, contracted by parceners or by persons jointly and severally bound must be paid by any one of them, who is forthcoming, and so must the debt of the father by any one of the undivided brethren, who is forthcoming, but brothers who have made a partition, shall pay their proportionate shares. The texts of CA'TIAYANA and VISHNU are thus expounded by the author of the *Reinacara*. He considers the text of CA'TIAYANA, and part of the text of VISHNU, as relating to a subject similar to that of partnership in commerce. The subject of partnership in commerce may be thus exemplified four traders, severally subscribing their names to the same written instrument, with one accord contract a debt for the purpose of traffick in like manner four priests may contract such a debt for the support of their families or the like. The commentator considers the last half of the text of VISHNU as relating to the payment of their father's debt by brothers.

BOTH these texts may also be expounded as relating to debts contracted by undivided brethren, like the text of NĀREDA and VYĀSPATI. In their result both interpretations of the text are accurate. The texts of

CĀTYĀYANA and VRĪHASPATI are obviously applicable to subjects similar to that of partnership in trade ; for they literally express " a debt contracted under the same shade," and " among persons sheltered by the same shade." The text of VIṢṆU is obviously applicable to undivided brethren, since it expresses, " a debt contracted by parceners."

IF five brothers have the same abode, and partake of the same food ; and one then contracts a debt for the support of the family, with the assent of the rest, or from his own judgment, and dies or travels to a foreign land ; afterwards all *the survivors* make a partition, and by accident become poor, but are subsequently enriched by wealth which they themselves acquire : in such a case, who shall pay that debt ? out of what property ?

## CLXXXVI.

MENU:—IF the debtor be dead, and if the money borrowed was expended for the use of his family, it must be paid by that family, divided or undivided, out of their own estate.

" DEAD" is illustrative of *civil death and the like*. " Out of their own estate," hence, if any one of the heirs, though they be separate from each other, contract a debt for the support of persons whom all the heirs are obliged to maintain, and die or be unable to discharge the debt, it must be paid by all the heirs.

*The Retnācara.*

IT is stated in this gloss, that partition had been made before the debt was contracted ; there is this difference *between the gloss and the case supposed*. But in fact both are right. Accordingly CULLŪCABHATTA says, if he, who contracted the debt, be dead, and the money were expended for the support of the families of all the brethren, as well divided as undivided, that debt must be paid by the divided and undivided brethren out of their own property.

IF that debtor be living, he must pay the debt out of the *joint* estate of all

*the brethren*; or if it be true, that they have no assets, he must pay it out of his own property. Should any one of them die leaving no son, what would follow? Since the word "share" does not occur in the text of MĒNU, the whole debt must be paid by *the survivors* this is a settled rule. It appears, that the whole debt shall be paid by the survivors, out of the estate of the deceased, or, on failure of that, out of their own property. But it must not be deemed inconsistent with reason, that a debt, contracted by one brother for the maintenance of divided brethren, should be paid by another brother out of his own property, for it is similar to the case, where a debt, contracted by one of the associated traders, must be paid by another. In this case, the creditor need not wait twenty years, as has been already mentioned. It is thus declared by VRĪHASPATI and other sages, that the son must pay the debt of his father. CATYAYANA distinguishes sons

## CLXXXVII

CATYAYANA —On the death of a father, *his debt* shall in no case be paid by his sons incapable from nonage of conducting their own affairs, but at their full age of *fifteen years*, they shall pay it in proportion to their shares, otherwise they shall dwell hereafter in a region of horror.

THE father's debt must be understood "By his sons incapable from nonage of conducting their own affairs" by infants unable to discharge the debt. Such in effect is the sense. Consequently, if it can be paid by any persons during minority, it must be paid even during their minority but how could it be paid during infancy and total incapacity? 'At their full age,' at the age when they are able to pay. As a share of the father's heritage is received by a son, whose father was joint tenant with his own brothers and the rest but who is himself separate, so must a proportionate share of his debt be paid by that son. But, if his father were separate from his own brothers and the rest, or if he had no brothers the whole debt contracted by him must be paid by the son. To explain these and similar distinctions laws have been propounded. This text of CATYAYANA is intended to show, that those, whom former texts have declared liable to the payment of debts, must

must pay them at their full age. Consequently "father" is here illustrative of a general sense. How should a debt, though contracted by the party himself, be paid during a period of disability? But a debt, contracted by his father and the rest, is still more distant.

"OTHERWISE," if they do not pay it at their full age, the sons and the rest shall dwell hereafter in a region of horror. It appears therefore, that sons and the rest are positively bound to pay such debts. NA'EDA declares the same necessity.

#### CLXXXVIII.

NA'EDA :—EVEN though he be independent, a son incapable from nonage of conducting his affairs is not *immediately* liable for debts.

THE same :—FATHERS desire male offspring for their own sake, *reflecting*, "this son will redeem me from every debt whatsoever due to superiour and inferiour beings:"

2. Therefore a son, begotten by him, should relinquish his own property and assiduously redeem his father from debt, lest he fall to a region of torment.
3. If a devout man, or one who maintained a sacrificial fire, die a debtor, all the merit of his devout austerities, or of his perpetual fire, shall belong to his creditors.

"INDEPENDENT;" separate. It is consequently intimated, that there is no other person, such as undivided brothers and the rest, amenable for the payment of that debt. He, who has neither father nor mother, is deemed independent, as will be mentioned. Hence a minor son is bound to pay the debt; but in that case only a delay is allowed by NA'EDA. Such is the import of the text.

"WHATSOEVER" relates to the "debts due to superiour and inferiour beings."

beings." What is due to deities, holy sages and progenitors, is a debt due to superiour beings, debts due to men are due to inferiour beings. But HELAYUDHA, considering this as solely relating to debts due to human beings, expounds the terms, degrading debts *due* to creditors. In the *Ret-nácara* it is remarked, that they are degrading by reason of the extreme sin consequent to debts undischarged.

BUT MISRA cites the text of CĀTYĀYANA (Book III, Chapter IV, v. XV). it is therefore his opinion, that an independent son, or one who has neither father nor mother and is not under the age of sixteen years, is liable for the payment of debts. It may be here noticed incidentally, that "until his sixteenth year," signifies to the *nearest* limit of his sixteenth year. consequently he is a minor until the close of his fifteenth year. The construction of the text is this, 'an adolescent is also called a minor.' But *strictly* the term (*pogenda*) is applicable only to a child under the age of ten years, agreeably to the text cited by SRĪDHARASWĀMĪ.

INFANCY extends to the fifth year, childhood is limited to the tenth, adolescence continues to the sixteenth year, when puberty commences.\*

"UNDER eight years," or before the commencement of his eighth year, he is an infant (*śiṣu*) and he also is a minor, *but distinguished from an adolescent*. Another is also distinguished, called a young infant (*cumāra*) to the commencement of his fifth year, agreeably to the *same* text cited by RAGHUNANDANA, "infancy extends to the fifth year." The use of this distinction regards penance or expiation and the like. But here minority must be taken to the end of the fifteenth year, and this must be understood of a computation by vulgar or *śavana* time, from the day of his birth. Afterwards he is adult or competent to affairs, as is expressly declared by CĀTYĀYANA. But a certain author has remarked, that, if a youth become conversant with

\* A PART only of the verse was here cited. The distinctions may be thus recapitulated: a minor (*bāla*) is in early infancy to the end of his fourth year and called *cumāra*, so long he is an infant to the end of his seventh year and in this period of his life is called *śiṣu*, he is called a boy (*pogenda*) from his fifth to the end of his ninth year, and his adolescence as *cūdra* continues from the tenth, to the end of the fifteenth year.

affairs before that age, in consequence of auspicious fortune merited in a former existence, or if a youth remain unacquainted with affairs beyond that age, through ill auspices, both these should be considered accordingly *as adult or as under age*. But sages have mentioned an age, near to which puberty may be expected.

FROM all this detail it appears, that the son *śa śālā* dwell hereafter in a region of horror, if he do not redeem his father from debt.

## CLXXXIX.

VRĪHASPATI:—A HOUSEKEEPER shall discharge a debt contracted by his uncle, brother, son, wife, servant, pupil, or dependants, for the support of the family *during his absence*.

IT is here implied, that a debt, contracted even by others for the support of the family, must be discharged by the housekeeper.

The *Retnācāra*.

THE meaning therefore is, that, since the terms conclude in the plural number, which conveys the sense of "and the like," *therefore* maternal uncles and the rest, as well as other persons, are comprehended in the text. The principle of the law may be here stated; should a son competent to affairs be at hand, a debt, contracted by divided brethren, or the like unauthorized by him, is not valid: but, in the case of parceners, if any one of five brothers forbids the contracting of the debt, and is able to support the family by other means, the debt, contracted by another brother, is due by the borrower alone, and shall not be paid by him who opposed the debt. Yet, if the money *śo* borrowed be used by him who opposed the debt, or by his dependant, being unable to supply sufficient funds for the support of the whole family or of his own immediate dependants, it must be discharged by him. A little has been thus mentioned on a wide subject. In fact the whole relates to fraudulent practice. Yet if he, who resisted the debt, maintain his dependants out of the money borrowed against his consent, without any fraudulent practice, he must nevertheless discharge the debt.

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affairs before that age, in consequence of auspicious fortune merited in a former existence, or if a youth remain unacquainted with affairs beyond that age, through ill auspices, both these should be considered accordingly *as adult or as under age*. But sages have mentioned an age, near to which puberty may be expected

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### CLXXIX

VRĪHASPATI — A HOUSEKEEPER shall discharge a debt contracted by his uncle, brother, son, wife, servant, pupil, or dependants, for the support of the family *during his absence*.

IT is here implied, that a debt, contracted even by others for the support of the family, must be discharged by the housekeeper.

The *Retnacara*

THE meaning therefore is, that, since the terms conclude in the plural number, which conveys the sense of “ and the like, *therefore* maternal uncles and the rest, as well as other persons, are comprehended in the text. The principle of the law may be here stated, should a son competent to affairs be at hand, a debt, contracted by divided brethren or the like unauthorized by him, is not valid but, in the case of parceners, if any one of five brothers forbids the contracting of the debt, and is able to support the family by other means, the debt, contracted by another brother, is due by the borrower alone, and shall not be paid by him who opposed the debt. Yet, if the money *so* borrowed be used by him who opposed the debt, or by his dependant, being unable to supply sufficient funds for the support of the whole family or of his own immediate dependants, it must be discharged by him. A little has been thus mentioned on a wide subject. In fact the whole relates to fraudulent practice. Yet if he, who resisted the debt maintain his dependants out of the money borrowed against his consent, without any fraudulent practice, he must nevertheless discharge the debt

## CXC

MENU.—SHOULD even a slave make a contract *in the name of his absent master* for the behoof of the family, that master, whether in his own country or abroad, shall not rescind it.

“ A SLAVE,” a mancipated servant and the like    “ That master,” literally the senior, but here signifying his lord    *The Retndeara*

By the term used (*nyaya*) is signified best, as well as eldest, but here metaphorically the master. This is expressed in the gloss, “ but here signifying his lord.” In fact, he is best or preeminent, since he supports the family.

## CXCI

NAREDA —WHATEVER debt has been contracted for the use of the family by a pupil, an apprentice, a slave, a wife, or an agent, must be paid by the head of the family.

“ An agent,” one who acts *in his service*.    “ A debt,” money taken up on loan    *The Retracara*

“ A PUPIL,” one, who learns texts of scripture    “ An apprentice,” a student *in general*.    “ A slave,” born in the house of his master or the like.    “ An agent,” a hired servant or other person, who has engaged in service for a day, a month, or the like. By this text it is declared, that a debt, contracted for the behoof of the family, by any person whomsoever connected with that family, is valid.

## CXCI

VISHNU —A debt, of which payment has been previously promised, or which was contracted by any person for the behoof of the family, must be paid by the housekeeper.

“ A DEBT” must be here supplied. A debt, even though contracted for the

the purposes of traffick, but of which payment has been promised by the housekeeper, must be paid by him; but a debt, contracted for the benefit of the family by any person whomsoever, shall be paid by the housekeeper. Such is the exposition of the *Retnâcara*. "Promised" here signifies "of which payment has been promised."

## CXCIH.

CĀTYĀYANA:—WHAT has been borrowed for the benefit of the family, or during distress, (while *the principal* was disabled, seized *by the king*, or afflicted with disease,) or in consequence of a foreign invasion,

2. Or for the nuptials of his daughter, or for funeral rites; all such debts contracted by *one of the family*, must be discharged by the chief of *that family*.

"CHIEF" is in the sixth case with an active sense. It must therefore be discharged "by the chief" of *that family*.

The *Retnacara*, RAGHUNANDANA and others.

"DISABLED;" happening to be then incapable of earning wealth. "Seized, or afflicted with sickness" (*grīḥita-vyādbhitē*); "seized," that is, seized by the king; the terms, "seized" and "diseased," are joined in apposition: the sense therefore is, while the principal is confined by the king for some offence, or is afflicted with disease. Or the apposition may be in the form named *carmadbaraya*, the first term being *grīḥi* housekeeper, and the last term, *itab* gone, as in the example, 'having bathed and being smeared with sanders wood;' or in the same form of composition but resolvable into this sense, "and that housekeeper be gone," that is, be absent. By the import of the word housekeeper, the religious anchoret is excluded; for an anchoret does not return to his house. Since he could not discharge a debt, the term taken generally would be unmeaning; therefore it is limited by the annexed term, housekeeper.

OR the text may be read *grīḥita-vyādbhitē*, contracting a disease; an apposition

sition in the form called *babubribi*, instanced in the expression “ a monkey ascending a tree ’ Should the principal be so circumstanced, a debt, contracted by any person connected with him (the text must be so supplied), is *a debt* contracted during distress. All such debts must be paid by the chief of the family this construction will be suggested by the subsequent verse. A debt may also be contracted by a person unconnected with him, employed by one who is connected with him such is the practice

“ IN consequence of a foreign invasion, ’ a debt, contracted for the purpose of expatriating by one who absconds through fear of a foreign prince, is *a debt* contracted during distress. “ For funeral rites, ” for the obsequies of a parent or the like

CONSEQUENTLY, the chief of the family being disabled, a debt, contracted by any person connected with him, for the support of that family, for guarding against the violence of a king, for the cure of a distemper, and (if *gribita* be expounded absent householder) for defraying the travelling charges of one, who wishes to expatriate with the view of acquiring wealth, for relief from a general calamity, for the celebration of a daughter’s nuptials, or for the performance of obsequies for a parent or the like, must be paid by that chief of the family. Such is the sense. It is illustrative of a general meaning, and intends any debt contracted for the accomplishment of some business, which being omitted even in consequence of poverty, sin or calamity must ensue.

*Gribitam vyadbite* is a reading found in some places, particularly in the *Dayatat* &c the sense is obvious, “ *contracted during sickness* ”

THE principle of the law should be noticed in the case of a daughter’s nuptials, for so much expense only, as preserves from infraction the usage of the principal’s family, may another contract debts, not for the celebration of splendid nuptials the whole of what is borrowed for unauthorized expenses, must be paid by the borrower, but expenses, which are suitable to the usage of his family, must necessarily be admitted by a master able to discharge them. Consequently, should he be seized with a distemper, or unwarily go to a foreign

reign land, a debt may be contracted by any person connected *with him*, to defray the expenses required for such a purpose, as estimated by five persons. This may be apprehended by the wife.

MUST a debt, contracted for the behoof of the family, without the consent of the principal, be paid by him or not? On this point CA'TVĀYANA propounds *a text already cited* (IX).

A DEBT contracted by a son, a slave,\* and the rest, even without the assent of the absent principal, for the maintenance of his family, that absent principal must discharge: this BHRIĠOU approves. Such is the construction of *the text* (IX).

CHANDĒSWARA.

HERE it should be noticed, that, in the expression "even without his assent," the word "even" connects this case with that of assent. For instance, the chief of a family, intending a journey to a foreign country, thus addresses his son, servant, or the like; "the family must be maintained by thee, contracting debts, or otherwise obtaining funds;" or he went abroad with such an intention *unexpressed*: in these cases his assent is declared or implied. But, if it be not so, he does not assent; still, however, the debt must be discharged by the chief of the family.

#### CXCIV.

NĀREDA:—A FATHER must equally pay the debt of his son, contracted either by his own appointment, or for the support of his family, or in a time of distress.

"A TIME of distress;" a season of calamity.

The Retnācara.

THIS shall be here discussed; when a father, afflicted with a disease, remains altogether at home; and his son, slave, or the like, contracts a debt for the support of the family, but with the knowledge of the father; must the debt be in that case paid by the father or not? It is answered, three disjunc-

## CXC.V.

**CA'TYA'YANA:—**WHAT a man has promised, in health or in sickness, for a religious purpose, must be given; and, if he die without giving it, his son shall doubtless be compelled to deliver it. \*

THAT, concerning which a man has declared, "this sum must be paid by me to that man," or, in other words, what a man has promised, his son shall be compelled to deliver, but, if he die after delivering it himself, it shall not be *again* paid by his son. this the sage declares, "if he die without giving it." It is intimated by the expression, "for a religious purpose," that the son is under no necessity of delivering what has been promised to harlots or the like. The text is expounded by JĪMŪTĀ VĀHANA and others as relating to this subject.

BUT we thus expound it, the master of the family being gone to a foreign country, or diseased, or the like, a debt contracted by his son, his servant or the like, and made known to him, must be paid by the chief of the family when he returns from that foreign country, or recovers from the disease. But, if he die without paying it, the debt must be discharged by his son, or by the successor to the estate, or other person liable to the payment of it; on failure of the first respectively, by the next in succession. "For a religious purpose," or from a religious motive, that is with a view to the strict observance of duty the construction is, he must pay it on that account; meaning, that otherwise duty is violated.

BY all this detail the obligation on a son to discharge his father's debt has been propounded. The payment of a debt contracted for the support of the family has been incidentally mentioned. A distinction in regard to the payment of debts by a grandson shall be now delivered.

## CXC.VI

**CA'TYA'YANA:—**A DEBT of the paternal grandfather, which is proved, or which is partly liquidated, must be dis-

\* Cited in Book IV, Chapter IV, at v III, and there expounded as relating to gifts

charged by the *grandson*, but never shall a debt, contracted for immoral uses, or which was contested by his father, be paid by the *grandson*.

“PROVED,” established by evidence “Which is partly liquidated,” which his father had begun to pay, but of which a balance remains due “Contracted for immoral uses,” incurred for losses at play, for spirituous liquors or the like Sums due for losses at play for spirituous liquors and the like, shall be subsequently noticed “Contested by his father,” which he disputed, averring that it was not due by him Such a debt need not be paid by the grandson, according to the *Retnacara*

“OR which is partly liquidated, the particle *māy* here bear a connective sense It consequently connects the debt partly liquidated with that, which is proved to be due But, in fact, “partly liquidated” is mentioned as confirming the certainty in respect of the debt Accordingly another text, cited in the *Retnacara*, omits the terms “balance of a debt liquidated”

#### CXCVII

CATYAYANA — BHRĪGU ordains, that a debt, devolving from the grandfather, which was proved, and acknowledged by the father, must be discharged by grandsons, if it were not contracted for immoral uses, nor *already* paid by the sons

2 THE rule shall be the same in regard to the debts of the grandfather, which have not been discharged by *other* grandsons, nor by his *own* sons but a debt of the grandfather shall be paid by his grandsons without interest.

“PROVED,” established by evidence “Not contracted for immoral uses,” not incurred for losses at play, for spirituous liquors and so forth “Nor *already* paid,” not *already* discharged

A DEBT of his grandfather, not paid by the sons of the eldest son, nor by

by his own father or uncles, must be discharged by another grandson. Such is the sense of the second verse. But a certain author proposes a reading on the second measure of this verse, *na dattam vapi tat swatab* instead of *na dattam vapi tat futab*, and expounds it, a debt of the grandfather, which has not been already paid or acquitted by the grandfather himself nor by his sons,\* the father and uncles of the person in question, must be discharged by the grandson. "*Swatab*" has the sense of the third case

## CXCVIII.

CĀTYĀYANA. — AFTER the death of his father, debts of his grandfather must be carefully discharged by the grandson; but a debt contracted by an ancestor is not recoverable from the fourth in descent.

A DEBT, which was originally contracted by the fourth ancestor or great grandfather, reaching his descendant, namely the great grandson, recedes or is not recoverable the great grandson or remoter descendant need not discharge it. Such is the *literal* sense according to the *Retnacara*. It follows of course, that the son or grandson must discharge it

## CXCIX

NA'REDA: — AN undisputed debt of the grandfather, which has been successively due by him and his sons, but has remained undischarged by them, shall be paid by his grandsons, but it is not recoverable from a person, who is fourth in descent from the debtor.

"SUCCESSIVELY due," due by the grandfather and father consecutively.  
The *Retnacara*

A DEBT, contracted by the grandfather, affects him in the first place, next his son, and lastly his grandson "Proved," which occurs in pre-

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\* We must therefore read in the first measure "*putrab*" by sons, instead of "*putrab*" by grand-sons



ceding texts, has been explained & established by evidence. In what does the proof consist ?

CC

CA'TYA'YANA . — BUT, should a considerable sum be claimed, so much only as the creditor or claimant may prove by the evidence of witnesses, shall he recover as a just debt.

If a considerable sum be claimed, if the claimant aver, " so much was borrowed of me by this man, or by his father, or his grandfather," and the borrower, his son, or grandson, answer *the plaint* by denying its truth, so much only as the creditor justifies by the evidence of witnesses, or proves to be due, shall he recover from the debtor, not the whole sum, which he claimed *but does not prove*. Such is the explanation according to the *Ratnacara*. Hence, if a large sum be claimed, and part be proved and part unproved, it is not right to affirm, that the whole claim is false, because it was partly false. This is declared *by the text*.

" By the evidence of witnesses," a mere instance of evidence in general

CHANDESWARA

SINCE it is not specified from whom it shall be recovered it follows that the whole of what is proved must be paid by him, whoever he be, by whom such debts ought to be paid. But it must be paid without interest by a grandson as has been already noticed. On failure of a grandson the great grandson or other person, who succeeds to the estate, must be understood in the regular order of succession to heritage. VACHESPATI MISRA here observes, that such debts only, as would be payable by a son, shall be paid by another heir and the rest but it shall be paid by these without interest; for interest has not been ordained in this case. Such only is the distinction.

When debts of the father should be paid by a son, MENU declares by excepting others (CLI)

" MONEY

“ MONEY due by a surety ,” this is restricted to sureties for appearance or for honesty.  
The *Retnācara*.

CONSEQUENTLY surety in the second verse denotes also *the surety for good behaviour*.

“ IDLY promised ;” an unprofitable gift *promised*.

The *Retnācara*.

IT in effect signifies a gift promised with no view to a moral purpose.

MENU :—FOR religious purposes gifts are made to priests ;  
for the sake of fame, to musicians and actors.

“ LOST at play (CLI) ,” due in consequence of gaming It consequently signifies any debt contracted for a stake in playing with dice, or for the purchase of things used in gaming. If a fine to the king be incurred by gaming with dice, and that fine cannot be paid without contracting a debt, should the offender contract a debt for that purpose, shall it be discharged *by his son* or not? The answer is, although that debt be occasioned by gaming with dice, yet, being contracted in a time of distress, it must be discharged “ Due for spirituous liquors ,” in consequence of drinking spirituous liquors, borrowed for the purpose of *buying* intoxicating liquors, and so forth.

THIS is restricted to money due on these accounts by persons not authorized to game or drink spirituous liquors.

The *Retnācara*,

GAMING is authorized by the system of law on the festival called *dyūta-pratīpet*, and the use of spirituous liquors is authorized by law on the celebration of the sacrifice named *Sautrāreṇī*, to certain mixed classes the constant use of spirituous liquors is allowed by custom. a debt contracted by the father for these purposes, in such circumstances, must be paid by his son. Such is the notion suggested in the *Retnācara*.

“ WHAT

“ WHAT remains unpaid of a fine or toll ;” for instance, a fine being due to the king for some offence, if the father die after paying half the amount of that fine, the balance shall not afterwards be paid by his son. ‘ Nor what remains unpaid of a toll.’ Toll signifies a duty of custom payable at wharfs and the like. For example ; the father, having obtained indulgence on the grounds of friendship or the like, has only discharged half of the regulated customs, which are paid to the king’s officers by traders resorting to markets or the like on the business of traffick ; returning home he happens to die : in that case, the remainder need not be paid by his son. The same term (*sulca*) also signifies a nuptial present given to a bride at the time of her marriage, and the like.

## CCI.

VRĪHASPATI:—THE sons are not compellable to pay sums due by their father for spirituous liquors, for losses at play, for promises made without any consideration, or under the influence of lust or of wrath ; or sums, for which he was a surety, *except in the cases beforementioned* ; or a fine, or a toll, or the balance of either.

Sums due for spirituous liquors, or losses at play, money idly promised, and the balance of a fine or toll, have been already explained. A promise made under the influence of lust, or under the influence of wrath, shall be subsequently explained.

The *Retnācara*.

MISRA expounds presents idly made, presents idly promised. He conceives, that, were they actually given, they must necessarily be delivered, because the property of the father is devested.

## CCII.

GOTAMA:—MONEY due by a surety, a commercial demand, a toll, the price of spirituous liquors, a loss at play, and a fine, shall not involve the sons of the debtor.

DEBTS originating in suretiship, commerce and the rest shall not involve the sons; they shall not be paid by the sons of the debtor.

*The Retnâcara.*

THIS appears on a cursory view to be the purport of the gloss; a debt incurred by becoming a surety (for instance, a man has become surety, and, the debtor dying, the sum becomes due by the surety; a debt so incurred), a debt contracted for commerce, for a toll, for spirituous liquors, for a loss at play, for a fine, need not be paid by the son of the debtor; he shall only discharge a debt incurred on a moral consideration, or for an usual cause, or for the support of the family.

VA'CHESPATI MISRA expounds "sums for which he was a surety," sums due by a debtor, for whose appearance or honesty he was surety; these, and sums become due by the father in commerce or the like, shall not involve the sons. He expounds the text, sums due by a surety for the appearance or honesty of the debtor, because he thinks the son of a surety for payment must necessarily discharge the debt, under the text of MENU (CL). Money due in commerce may be thus instanced: some person, making a contract with this man's father, delivered certain sums of money to him, as the price of barley or the like, on an agreement in this form, "I shall receive an advantage above the quantity which may be equivalent to the sum advanced at a price to be arbitrated by five persons;" the vender dies, after delivering to the buyer goods equivalent to the advance at the arbitrated price; the remainder need not be delivered by the son. Again; the price of spirituous liquors, the cost of dice and the like, a stake at play, a fine originally small, or the balance of a large fine, need not be paid by a son after the death of his father.

BOTH these opinions shall be discussed: and first, the gloss of the *Retnâcara*. Since the word "debt" does not occur in the text of GÔTAMA, what should suggest "a debt contracted in consequence of suretiship?" It would be inconsistent with the reason of the law. If the father were surety for payment, the debt, though contracted by a stranger, must be paid by his son; as is ordained in the system of jurisprudence: how can it be reasonable, that

that the son should not in this case discharge the debt though actually contracted by his father? It is also said, that a debt, contracted on a commercial account, need not be paid by the son: how can that be pertinent? Why should not the debt be paid by the son, who participates in the benefits of that traffick, or is *at least* naturally competent to benefit by it? If the term (*śulka*) be explained a nuptial present instead of a toll, it has been already mentioned, that a debt, though contracted by another on this account, must be admitted by the master of the family; why should not the son admit such a debt contracted by his father? If it be explained a toll payable at a wharf or the like, that is a cause consistent with usage and good morals; it appears therefore, that it ought to be paid. Why should not a debt, contracted for the payment of a fine, be discharged by the son? Since a man atones for his crime by paying the fine, a debt, contracted to discharge a fine, is contracted on a moral account. Let it not be objected, that this text, being placed under the title of debt, positively concerns debt alone; and, since it is a rule not to strain a text, even money borrowed, or otherwise due, on account of a fine need not be paid by a son. In his gloss on the text of MENU above cited (CLI), CULLŪCABHATTA says, after the death of his father a son is not liable for the payment of a fine or toll, or the balance of either, which was demandable from his father. He does not say, that a debt, contracted on account of a fine, need not be paid.

## CCIII.

VYĀSA also declares:—NEITHER a fine, nor a toll, nor the balance due for either, shall be *necessarily* paid by the son of the debtor; nor any debt for a cause repugnant to good morals.

On this text the authors of the *Retrācara* comment; since the balance of a fine is suggested by the *general* term "a fine," and is nevertheless repeated, the sense must be, that, if the amercement be great, it must be paid, but not the small arrear of such a fine; but, if the amercement be small, no part of it need be paid *by the son*: consequently "fine," in this text, signifies an inconsiderable fine; and "toll," an inconsiderable toll. In like manner, since VYĀSA and MENU have noticed, under the title of debt,

finer and the like which are not debts, it is not reasonable to explain the words fine and toll, which occur in the text of GÓTAMA, as signifying debts contracted for such causes. Consequently "debt," in the gloss of the *Retnācara*, signifies money due, or sums similar to debts. It therefore coincides with the gloss of MISRA. Or the text of GÓTAMA may be expounded in this manner. The terms *may be connected* and signify a commercial toll, or duties payable at wharfs and the like. "Commercial toll" may nevertheless intend nuptial presents also.

THE expression in the text of VYĀSA (translated, "any debt for a cause repugnant to good morals") is explained by MISRA, 'excluded from usual causes.' Consequently that debt, which is contracted for some civil purpose consistent with the prescriptive usage of good men, must be paid by sons and the rest, but if it be the reverse, it need not be discharged.

IN fact, the import of the expression used by VYĀSA is this; after the death of the father, a fine due by him need not be paid by his son; surely the balance of a fine need not be paid but, if the son, erroneously paying a fine to the king, have left some part of it undischarged, and be now impleaded by any man, that fine, due by the father, was not payable by the son, and therefore he shall not discharge the balance of it. Nor shall he receive back what he had paid to the king the second term is only propounded to forbid the payment of a mere balance. The difficulties, which will be noticed, may be accordingly removed.

THEY are as follow Among the many various fines ascending to the highest amercement, it is difficult to determine, which shall be deemed considerable, which inconsiderable and no reason appears, why an inconsiderable fine should not be paid, and why a considerable fine should be paid. Again, if a very small part of the greatest fine have been paid by the father, it is agreed on all hands, that his son shall not be compelled to discharge the remainder but in another case, he must discharge the whole fine due by the father, amounting to somewhat less than that *greatest fine*, which forms a great disparity. Thus and other *objections may be urged* A debt, contracted for the making of a garden, pool, or the like, undertaken on religious considerations, must be

be considered as incurred for religious purposes. It appears, that a debt, contracted for the structure of a house, a garden or the like, to be enjoyed by future generations, or for increase of wealth *by commerce*, must be paid by a son, who enjoys the benefit of it, or is competent to enjoy it. Even a debt, contracted for the sake of wearing delicate apparel and the like, must be paid by a son, since it has not been enumerated among debts which he need not discharge. This is right. Some, however, think, that this, like money idly promised, need not be paid by the son.

HERE an incidental observation may be made. When a man, unable to make immediate payment of tolls due at wharfs or the like, gives a surety to the king's officer, and both the merchant and surety afterwards die, it shall not in that case be paid by the son of the surety; for there would be great disparity in requiring from the son of the surety payment of that, which need not be paid by the son of the merchant himself. Consequently whatever must be discharged by the son of a debtor, that only need be discharged by the son of a surety for payment.

CĀTYĀYANA explains promises made under the influence of lust or of wrath.

#### CCIV

CĀTYĀYANA.—WHAT a man has promised, with or without a writing, to give to a woman who had another husband before, let the judge consider as a debt contracted under the influence of lust:

2. But what has been promised to gratify resentment by hurting *another* or destroying *his* property, let the judge consider as a *debt* incurred under the influence of wrath.

Hence the rule cannot be strained.

MISRA

CONSEQUENTLY, when the expression, "incurred under the influence of lust"

lust," is taken in its literal sense ; what is promised by a man to his own wife, might be considered as a debt incurred under the influence of lust : to prevent such wrest, CĀṬYĀYANA has propounded this particular explanation.

WHAT has been promised, with or without a written engagement, to a woman who had another husband before, or, if that suffice not, what has been borrowed and given to her, is a debt contracted under the influence of lust. The expression, " a woman who had another husband before," intends only a woman not *legally* married to the giver.

The *Retnācara*.

Is not that, which is promised to a woman who had another husband before, alone considered as granted under the influence of lust ; why should the author add " borrowed and given to her ?" The objection is ill founded, since " debt " would be unmeaning. " Not legally married " signifies not legally married to the party himself. Consequently whatever is promised, or borrowed *and given*, for the abduction of a woman, with whom intercourse is criminal, must be considered as a debt incurred under the influence of lust.

THE second verse is explained in the *Retnācara* ; what is borrowed to give away for the purpose of destroying another's property, or injuring another man, through resentment, is a debt incurred under the influence of wrath. Here debt must be understood, to complete the similarity between engagements made under the influence of lust and of wrath. The construction therefore is, " that, which has been so promised, let the judge consider as a debt incurred under the influence of wrath." It was first promised, and afterwards borrowed and given. Hence, resentment being roused by mutual contention in respect of some effects, one promises them to priests, declaring, " I will give this to a priest ;" not being able to give away those effects, he wishes to give the value of them, but, unable to give it out of his own property, contracts a debt ; that debt might be considered as incurred under the influence of wrath. To prevent such wrest, CĀṬYĀYANA has propounded this explanation.



toll, and money idly promised, that is, promised to impostors, bards, or wrestlers, (for it is declared, "Fruitless is a present given to an impostor, a bard, a wrestler, a quack, a flatterer, a knave, a fortuneteller, a spy, or a robber.") All such debts incurred by the father, his son, or other heir, need not pay to the vintner and the rest.

It appears from the expression, "to the vintner and the rest," that the price of spirituous liquors and the like, due by the father, need not be paid by the son to the vintner and the rest. But in fact the interpretation suggested in the *Retnácara*, that even a debt contracted for such purposes need not be paid by the son, should be admitted, for the phrase, which occurs in the text of *VYA'SA*, "nor any debt for a cause repugnant to good morals," shows, that such debts need not be discharged by the son. But *MISRA* has said nothing expressly on this subject.

YET a debt contracted by a father, for the payment of a fine to the king, ought to be discharged by his son; for the last term, in the following text, is expounded dominion over the senses and a fine imposed by the king; and because a fine has a moral purpose since it expiates guilt.

#### CCVI.

MENU:—BY open confession, by repentance, by devotion, and by reading the scripture, a sinner may be released from his guilt; or by almsgiving, by dominion over the senses, or by a fine to the king (for the word *dama* admits both senses).

IF a fine be an atonement, even the balance of a fine ought necessarily to be paid by a son, why have sages ordained, in contradiction to the reason of the law, that it shall not be paid? The objection is ill founded; for the fine is cancelled by becoming a religious anchorite on the approach of death, and by other means. All authors have directed penance, not the payment of amercements, to expiate guilt, which is inferred from an actual disease to have been contracted in a former existence. Accordingly the fourth measure of the text cited (CCVI) is in some copies read, "or by alms-giving

giving in case of his inability *to perform the other acts of religion* " It is, however, reasonable, that the balance of a fine should be paid by the son, if his father be absent, but, since the son is not his own master, the king cannot exact it by forcible means or the like This is a demonstrated inference

In general it is settled, that a debt contracted by a father shall be paid by the son with interest, or, on failure of him, by the grandson without interest. But all agree, that only such debts, as have not been excepted by any sage, need be paid Therefore a debt contracted for an immoral purpose, and money promised for such a purpose, or idly promised, or promised to the king or other person for the liquidation of a fine or the like, and so forth, need not be paid Such is the full meaning of the law Other debts must be paid by the successor to the estate, and the rest, in order, on failure of persons first liable But MĪRA holds, that they shall be discharged without interest, he assigns as a reason, because it has not been declared in this case, as in that of a son, that interest shall be paid CHANDĒSWARA, SÚLĀPANI and the rest have not expressly noticed this point To that *inference* it may be *therefore* objected, that every sage, who ordains the payment of debts by a grandson, declares, that they shall be discharged without interest, but some sages have directed, that a debt shall be paid with interest by the son *of the debtor*, others have not noticed the question of interest consequently, as no legislator has ordained payment with interest by successors to the estate, so none have ordained payment without interest, the rule being therefore general, what then should inhibit payment with interest This subject has been sufficiently discussed

## CCVII.

YĀJÑYAWALKYA —NEITHER shall a wife or mother *be in general compelled to pay* a debt contracted by her husband or son, nor a father *to pay* a debt contracted by his son, unless it were for the behoof of the family, nor a husband *to pay* a debt contracted by his wife.

## CCVIII

VISHNU:—NEITHER shall a wife or mother, *be in general compelled*

*pledged to pay the debt of her husband or son, nor the husband or son to pay the debt of his wife or mother.*

## CCIX.

NĀREDA:—A DEBT, contracted by the wife, shall by no means bind the husband, unless it were *for necessities* at a time of great distress: a man is indispensably bound to support his family.

2. A WIFE or mother shall not *in general* pay the debt of her husband or son.

THIS last hemistich is cited on the authority of MĪSRA.

UNLESS it were contracted for the support of the family at a time of great distress, a debt incurred by a wife shall not bind her husband: that is, it need not be paid by her husband.

The *Retnācara*.

BOTH these texts of VISHNU and the other *legislator* relate to a wife of unequal class: but a wife of equal class must pay a debt contracted by them even though experiencing no distress. Wives of unequal class are prohibited in the *Cali*-age; a text concerning the wife of equal class will be cited under the title of *inheritance*.

BHAVADEVĀ.

THIS is liable to objection. Why is the general term "wife" taken in a limited sense? Since it is a rule, that "what might be supposed is excepted," what might be proposed generally in respect of any person or thing, is alone specially excepted as relating to that person or thing. For instance; it being stated generally that a father's debt shall be discharged by his son, an exception is made, that a debt, contracted on account of gaming, shall not be paid. But in this case there is no such supposition. Why then is an exception propounded? It is answered, that sages have excepted these cases, apprehending the hasty supposition, that payment might be required because these persons

are not unrelated to the debtor, and are naturally competent to take his assets. For example; the text above cited (CLXVII 2) is illustrative of a general sense and comprehends great grandsons, daughter's sons and the rest. Consequently a debt shall not in general be paid by any other than a son or a son's son, yet it must be discharged by heirs of every description, if they have received assets. *YĀJNYAWALCYA* propounds an exception.

## CCX.

*YĀJNYAWALCYA*:—A DEBT, acknowledged *by her husband*, or contracted by her jointly with her husband or son, or contracted by the woman herself, must be paid by a wife or mother; no other debts shall a woman be compelled to pay.

“ ACKNOWLEDGED ,” fully acknowledged.

The *Dīpalcā*

It consequently signifies a debt admitted by her husband at the point of death.

“ WITH her husband or son ” the particle is connective, and includes her son also: hence a debt, contracted jointly with her husband or son, must be paid by a wife or mother. For instance; her husband and son being incompetent *to the management of affairs*, and the woman herself being very active, she contracts a debt jointly with them such a debt is meant. Or, the husband and son being incompetent, or being unable *to act* by reason of other occupations, she uses their names, or contracts debts in her own name from a moneylender: in either of these cases, the debt is contracted by the woman herself.

## CCXI.

*CĀTYĀYANA*:—A DEBT contracted jointly with her husband or son, or singly by the woman herself, shall be paid *by a wife or mother* in such, and in no other cases, shall the debts contracted by them be paid by her.

CCXII.

## CCXII.

NĀREDA:—If a wife be thus addressed by her lord at the point of death, *or just before a long journey*, “such a debt must be paid by thee,” she must pay it, however unwilling, if assets were left in her hands.

“DEBTS contracted by them,” debts contracted by her husband and son.

The *Retnacara*.

If the assets of the husband have been received by his wife, she must pay the debt, “however unwilling,” that is, even though she do not promise to pay it. But if the wife, so instructed by her husband at the point of death, in these words, “my debt must be paid by thee,” do promise to discharge it, she must then pay it even though assets were not left in her hands. Such is MISRA’s opinion, and he expressly declares it “a debt, acknowledged by her husband, must be paid by a wife, and so must a debt be paid by a childless widow, who has accepted the care of the assets, even though she have not accepted the burden of the debts for she is successor to the estate.” It must be therefore understood, that the debts of her husband must be discharged by the widow, who has accepted the care of the assets, under the text of YAJNYAWALKYA (CLXXI).

THIS appears also to be the opinion of CHANDESWARA, for *he says* in the *Retnacara*, “at the point of death” is illustrative of a general meaning. It therefore comprehends also one, who intends a journey to another country, or retirement in another order. But even an instruction incidentally addressed to the wife, by her husband, though not diseased or the like, requiring her to pay this debt, must be considered as given with a view to the probability of decease. This and other points must be considered

## CCXIII.

NĀREDA:—A CHILDLESS widow must pay the debt of her sister enjoining payment; or whoever receives the assets left by that sister, must pay her debts.

ON the death of one of two sisters left as coparceners in the house of their father who had no male issue, the debt of that sister must be discharged by the surviving sister enjoined to pay it. Such is the sense of the first hemistich. Or any other, who takes the succession, must pay that debt.

*The Retradzara.*

VRĪHASPATI also directs, that a father *should* pay a debt contracted by his son.

#### CCXIV.

VRĪHASPATI:—A DEBT, contracted by a son, shall be paid by the father, if he promised payment; or he may pay it from affection to his son; but, unless he promise, he cannot be compelled.

“ IF he promised payment,” or *authorized the contracting of the debt*: for instance, if the father told the creditor “ lend money to my son ;” or if he told his son “ borrow money to maintain your own grandmother.”

“ FROM affection to his son :” having contracted a debt unauthorized by his father, the son dies ; if his father, reflecting, “ should the debt remain unpaid, my son will go to a region of horror,” be disposed to discharge the debt through affection to his son, he may pay it. But otherwise he need not pay it: consequently a debt contracted by a son, need not be paid by his father, unless spontaneously, or in consequence of a promise.

#### CCXV.

CĀTYĀYANA:—By the general rule of law, a father need not pay the debt of his son; but he must pay it, if, either at the time of the loan, or afterwards, he promised payment.

“ PROMISED” here signifies stipulated at the time of receiving the loan; but promised after receiving the loan is conveyed by the expression “ subsequently agreed to,” or promised afterwards. Son is here taken illustratively.

*The Retradzara.*

THESE

THESE terms consequently fall within the sense of the expression used in text of VRĪHASPATI, and the texts therefore coincide. "Illustratively;" even a debt contracted by a wife or the rest, must be paid by her husband and the rest, if he gave previous or subsequent assent, and the wife or other debtor be unable to discharge it or die. Here the word "son" being considered as illustrative of a general sense, it may comprehend presumptive heirs of the same person, who live together and partake of the same food.

IT is reasonable, that the debt of a wife should in some cases be paid by her husband.

## CCXVI.

YAJNYAWALKYA:—If the wife of a herdsman, a vintner, a dancer, a washerman, or a hunter contract a debt, the husband shall pay it; because his livelihood chiefly depends on the labour of such a wife.

## CCXVII.

VRĪHASPATI:—THE husband, being a vintner, a hunter or fowler, a washer, a herdsman, a shepherd, or the like, shall pay the debt of his wife: it was contracted in the concerns of the husband.

THESE husbands shall be compelled to pay the debts of their wives. "Because" should be here supplied; and the construction is, because those debts were contracted by them in the concerns of their husbands. Consequently a debt may be contracted by a wife in the concerns of her husband, if they require such a debt.

## CCXVIII.

NA'VEDA:—EXCEPT the wife of a washer, hunter, herdsman, or vintner; for the livelihood of such a husband, and the support of his family, depend on her.

THIS must be connected for interpretation with the text above cited  
4 M (CCIX 1).

(CCIX 1), in this manner; a debt contracted by a wife, excepting the wife of a washer &c. shall not be paid by her husband. The reason is subjoined, and here again "because" must be supplied: or the second particle has the causal sense.

HERE "washer" and the rest are mentioned indeterminately. In fact, whatever be his class, if the husband's livelihood depend chiefly on the labour of his wife, he must discharge a debt contracted by her, whether he be a priest or a washer: but he, whose livelihood does not depend on his wife, whether he be a washer or a priest, shall not pay his wife's debt. This is noticed by MISRA: *he says*, 'in other cases also, wherever the wife has the chief management, there is no restriction of class; the wife alone conducts all affairs, the husband is absolutely ignorant of every transaction.' Accordingly it is observed, that, in the province of *Gāmarūpa*, almost every civil transaction is now conducted by women.

BUT this is merely a vague description; for a debt contracted by the wife of a *Brāhmaṇa* and so forth, for the support of the family, must also be paid by the chief of that family. From the reason assigned, "because his livelihood chiefly depends on the labour of such a wife," it appears, that any other persons, of whom the livelihood depends on the labour of their wives, must pay the debt contracted by those wives. This is admitted in the *Mitākṣarā*. CHANDĒSWARA also makes the same observation; 'the circumstance of his livelihood depending on the labour of his wife is particularly intended; not any restriction of class.'

HERE it should be remarked, that they are only mentioned approximately; for, the husbands being constantly occupied in washing clothes, attending cattle and the like, and therefore unable to provide necessaries for consumption, and such being the practice of certain *other* persons, the providing of necessaries, like *other* household business, is conducted by their wives alone. It is the same also in respect of husbandmen and the rest. However, a debt contracted by any married woman, who presides *over her husband's household*, for the support of her own brother's family, need not be paid by the husband, any more than the debt of a father contracted under the influence



ence of lust ; but other debts, contracted by his wife, must be paid by the husband.

## CCXIX.

CA'TYA'YANA :—A DEBT, which is contracted by a wife or mother for the behoof of the family, when her husband or son is gone to a foreign country, after authorizing *the loan*, must be paid by the husband or son.

If a husband or son, intending a journey to a foreign country, and being asked by his wife or mother for food and raiment, tell her, “ contract debts ;” the debt contracted by her must be paid by him when he returns to his own home. “ After authorizing the loan ” is an approximate expression ; for, even though he did not authorize it, the reasoning would be the same.

The *Retnâcara*.

THE meaning is, if he go abroad without making provision for her food, vesture and the like. “ When he is gone to a foreign country,” is also illustrative of a general sense ; the same rule should be admitted, even though he remain at home. As is mentioned in the *Retnâcara* ; ‘ if he remain at home, or go abroad, without assigning any subsistence to his wife or mother.’ This again is merely illustrative ; hence such a debt, even though contracted by a minor son or daughter, must be discharged.

HERE an observation may be made : a debt, contracted by a mother for religious purposes and the like, must be discharged by her son. Suppose a man, whose son is an infant, and whose wife has contracted a debt jointly with her husband, but he dies, and his son inherits his property ; in that case by whom should the debt be paid ? By the son alone, for he is under a double obligation to discharge the debt ; *under a civil obligation*, because he holds assets ; *under a moral obligation*, because he is son of the deceased. But, if the debtor leave no assets, what should follow ? It is replied, the son nevertheless ought to pay the debt ; for redemption from debt is stated as the benefit arising from male offspring alone, since the

text of NĀREDA (CLXXXVIII) describes the wish for male offspring as originating in the wish to be liberated from debt: sensual delights and male offspring are described as the benefit accruing from a wife, by a text of the *Cālicā purāna*, “ a wife affords delight and male offspring;” consequently, if there be a son produced by her, why should the wife, who has afforded other benefit, discharge the debt? It is accordingly remarked in the *Mistāc-śharā*, that ‘ a debt, contracted by a wife jointly with her husband, must, on failure of the husband, be paid by the wife, if she have no male issue.’

THUS the divine CĀLIDĀSA says in the *Raghuvarṣa*, “ Bliss in another world, and purity in this, spring from devotion and alms; but progeny of a pure race contributes to prosperity in the other world as well as in this,” And again, in the same work; “ thinking oblations will be hardly obtained after me, *the manes* of my ancestors taste the water, which I regularly offer, warmed by their sighs.”\* Of those passages the meaning is this; in another world, prosperity or auspicious fortune, that is, the bliss of heaven, is attained; in this world, auspicious fortune, that is, the discharge of debts, is obtained: meaning debts to the deities, to progenitors, to holy sages, and to men, The second verse is a speech of a mighty king named DILĪPA, who was childless. It has this meaning; water has been presented in the form of oblations to ancestors by me DILĪPA; but my ancestors taste the water warmed by their sighs: he assigns the cause of their sighs; after me DILĪPA it will be difficult to obtain *oblations* of water: reflecting, “ by whom will it be presented, since he has no son,” they emit warm sighs. Therefore, wanting progeny, ancestors also sigh with sorrow. It is hereby indicated, that *the birth of a son relieves ancestors* from this misery.

If there be both a great grandson who has succeeded to the estate, and a widow, what should be ruled? There is no difficulty in that case, because whoever takes the estate of the deceased, must also maintain those whom the deceased was bound to support. Since food and raiment must necessarily be furnished to the widow; from parity of reasoning, money sufficient to discharge the debts of her husband, which are payable by her, must also

\* The verses are only quoted in part, I refer the reader to a full text.

be supplied. But, if the debtor leave no assets, his great grandson does not succeed to any estate, the widow, however, has several property, such as jewels and the like, the debt should in that case be discharged by her out of that property, for sages have declared her liable to the payment of debts. This and other points may be reasoned by the wife. VISHNU also declares, that debts must be paid by those, who take the assets

## CCXX.

VISHNU: — HE, who takes the assets of a man leaving no male issue, must pay the sum due *by him*; and *so must* he, who has the care of the widow left by one who had no assets.

“ Sum” (*dhana*) here signifies debt, the same term in the subsequent phrase, “ who had no assets” (*adhdana*), signifies wealth      *The Retnacara*

Two sons have succeeded to the estate on the death of the father, in his life time the father had commanded one son to pay a certain debt, what is the rule of decision in that case? Although both be equally successors and sons of the deceased, that son only, who received the injunction, must pay the debt, for he is bound to fulfil his father's commands. But if the other son, considering it as a moral duty, spontaneously give his proportionate share, it should be accepted, else, how could the moral obligations of that other son be fulfilled? For he, who received the injunction should fulfil his father's commands without distressing the second son. Yet, if the second son delude his brother by this declaration, “ I am my father's son as well as he, I therefore will pay my proportionate share of the debt,” and do not pay *his share* of the debt to the creditor, it must be fully discharged by him who received the command, for his father, dreading immoral consequences, gave the order through apprehension of such deceit or the like. If a father, in such a case, give land or similar property to any one son with such an instruction, surely the debt must be discharged by him alone, and he shall take the whole property given by his father *on this consideration*, and his proportionate share of other property left by his father. The subject has been further discussed already

ON failure of persons holding assets, he, who has the care of the wife, must pay the debt, under the rule of VISHNU (CCXX) and text of YAJÑAWALKYA (CLXXI). NĀREDA declares it with a particular explanation.

## CCXXI.

NĀREDA :—HE, who possesses the last of disloyal wives, or the first of twice married women, must pay the debt contracted by her husband.

THE sense is this ; of four sorts of women wilfully libidinous, or disloyal, her, who is last or fourth in the enumeration ; and of three twice married women, her, who is first described ; he, who takes *either of these two women*, shall pay the debt contracted by the husband ; and not the debt contracted by the husband of any other woman. CHANDĒSWARA.

CONSEQUENTLY he, who takes a twice married woman of the second, or third description, or a disloyal wife of the first, second, or third description, shall not pay the debt contracted by her husband. The *same* legislator propounds the distinctions of twice married women and disloyal wives (Book IV, v. CLVIII.)

IF a man wed a girl, whose marriage has been already celebrated but not consummated, he must pay the debt of her first husband, because he has taken in marriage a girl already espoused by another.

THAT girl, who is tacitly or expressly contracted to one man by her parents, considering the laws of the district, or reflecting, “ the laws of our country are not violated by giving the damsel to that man though ugly ;” (“ laws ” are in the plural number with a comprehensive sense, including the laws of families and laws in general ;) if such a girl contract an affection for another man, handsome or rich, *and wilfully accede to him*, she is considered as the second twice married woman. The text (Book IV, v. CLVIII 3) is also read *utpannasālekā* instead of *utpannāsabesā* ; this reading the author of the *Mitāḥārā* explains, “ becoming disloyal.”

IF the same kinsmen, tacitly or expressly affiancing a damsel to one man, but deluded by beauty or the like, give her in marriage to another, she is considered as the third twice married woman. The distinction between the second and third arises from this difference, *that in one instance the second marriage is the act of her kinsmen, and in the other it is not the act of her kinsmen.* In these cases, since the first husband had not *actually* received the damsel, the debt contracted by the first husband shall not be paid by her second lord. By "parents" and "kinsmen" must be here understood her father, paternal grandfather, or other persons, who have a right to dispose of her in marriage.

WHETHER she have borne children or be childless (intimating generally one, whose marriage has been consummated), a woman, who clings to another man during her husband's life, through lust (or avarice, or any irregular appetite), is the first disloyal wife.

HER husband being living, she, who deserts him, and gives herself to another man, saying "I am thine," but afterwards returns to her first husband, again saying "I am thine," is the second. She is distinguished from the fourth, because, in respect even of her wedded husband, she is a woman previously enjoyed by another.

AFTER the death of her husband, a woman, living in his family, whether unguarded or guarded, who receives the caresses of another, through carnal desire, is the third disloyal wife. In fact she is similar to the first, but distinguished by the circumstance of her husband's decease, whereas the husband of the first was living. "Leaves his brother or other kinsmen" (Book IV, v. CLVIII 7), that implies, that she so acted, though opposed by her husband's brother and the rest. It denotes her sinning in secret.

OR the phrase, "leaves his brother or other kinsmen," may intend the case of troth verbally plighted, and the term "brother or kinsman" may comprehend every *sapinda* of equal class. Thus, if the affianced husband of a girl, who was tacitly or verbally given in marriage, die, and she re-

ceive the embraces of a stranger, or a person not related within the degree of a *śapinda*, she is considered as the third disloyal wife; not as a twice married woman. This may be understood from the ambiguous terms of the text. But if she receive the embraces of a man of equal class on failure of *śapinda*, she is a twice married woman of the second description. For in the definition of the third twice married woman (Book IV, v. CLVIII 4) the terms "*śapinda* of equal class" occur. Thus some expound the texts

ON this we remark, that, after the death of her husband, if a woman, previously authorized by him, receive the embraces of his brother for the sake of male offspring, there is no offence hence it is specified, "through carnal desire," and, "who leaves his brother or kinsman." If she pass by his brother or kinsman, and receive the embraces of another man of equal class, in conformity to the directions of her husband, there is no offence: therefore does the sage specify, "through carnal desire." But, if she receive the caresses of her husband's brother or kinsman, being impelled by lust or the like, *and not solely guided by the duty of raising up offspring*, still there is no offence this is also intimated by the text, "who leaves his brother or kinsman" Such a practice actually subsists among some people in particular districts. Yet, in fact, the procreation of a son on the wife of a kinsman is forbidden in the *Calī* age

[“THE procreation of a son by the brother of a *deceased* husband must in the *Calī* age be avoided.”]\*

IN this text also, "carnal desire" is an instance denoting likewise avarice and other irregular appetites.

"SHE, who, having received *injunctions*" (Book IV, v. CLVIII 8), who has been told by her kinsmen, receive the embraces of such a man, if she take as a husband any other man than him whom her kinsmen assigned, is the fourth disloyal wife and so is one purchased for money, or impelled by hunger or thirst Consequently the several phrases, "having received injunc-

\* The text, here partially quoted, is nowhere cited at large. Similar texts are cited in the fifth book. See likewise Book IV, v. CLVII, and a general note to the translation of Manu (V 3)

tions" &c. may be taken either conjointly or separately. This sense is denoted: a woman, having lost her husband, but desirous of wedlock, gives herself to some man, she is the fourth disloyal wife: and if a woman, whose husband is living, desert him and cling to another, but do not return to her *first* husband, she also may be considered as a disloyal wife of the fourth description. This text not specifying, "after her husband's decease," and the preceding text expressing (Book IV, v. CLVIII 6) "but returns to the house of her lord," there is no confusion.

SINCE he enjoys with a previous title this woman, who is another's wife, he must pay the debts contracted by her husband: and this must be considered as exclusive of an unmarried harlot.

## CCXXII.

CATYA'YANA:—A DEBT, which has been contracted by indigent and childless vintners and the rest, must be paid by him, who has the care of their wives.

UNDER the term "and the rest" are comprehended *all* persons whose livelihood depends on their wives.

MISRA.

"WIVES" being here mentioned in the plural number, disloyal wives of every description are suggested. Consequently he, who possesses the wife of a deceased vintner or the like, assimilated to property because *she* is able to support the family, must pay the debt of her husband. This is ordained by the text, and should not be controverted. Accordingly the following text of NĀREDA has a suitable import, otherwise it would be a needless repetition of the preceding text (CCXXI).

## CCXXIII.

NĀREDA:—HE, who approaches the widow of an indigent man leaving no male issue, must pay the debt of her husband; she is considered as his property.

AND this seems to have been the opinion of CHANDESWARA, Accordingly

he says, ' this text of NĀREDA also has the same import with the text of CĀTYĀYANA' (CCXXII). That again is a proper construction ; for in the texts of CĀTYĀYANA (CLXXIII 2) of NĀREDA (CLXXII) and of VRĪHASPATI (CLXXIV) the expression, " he, who takes the widow" (*śrībhāri*), exhibits the verb *brī* in the sense of possession ; and in the text of YĀJNYAWALKYA (CLXXI) and rule of VIṢṆU (CCXX) the similar expression (*śrīgrābī*) exhibits the verb *grāh* in the sense of caption or occupancy : but here (CCXXII and CCXXIII) the verbs *bhuj* and *in*, preceded by the inseparable particle *upa* (in the words *upabbōdā*, and *upaiti*) signify enjoyment and approach. The preceding text of NĀREDA (CCXXI) does not propound the obligation on him, who takes the widow, to pay the debt of her husband ; but, the obligation on him to pay the debt, on failure of heirs and sons, having been already stated (CLXXII), it propounds a special rule. There is consequently no objection to take the radical *as'* (of the word *samaśnuté*) in the sense of enjoyment or possession (CCXXI). Accordingly NĀREDA adds, " she is considered as his property" (CCXXIII) ; he benefits by the wife of the deceased, through the wealth brought with her. Or the relative, used adverbially in that phrase, denotes the woman. But he, who enjoys the widow, is only liable on failure of a guardian of the widow, and on failure of sons and grandsons not competent to the management of affairs. However, it is held in the *Retnācara* and other works, that this rule of decision concerns only those women on whose labour their husbands depend chiefly for their livelihood. The same opinion is almost expressly delivered by the author of the *Mitācśbarā*. In the last case and in this, the difference between him, who takes the widow or becomes her guardian, and him, who enjoys the widow or becomes her paramour, is evidently the same as between a man who has the care of another's land, and one who has the enjoyment of it.

BUT some hold, that one text (CCXXIII) propounds generally the payment of debts by him who takes the widow ; the other text (CCXXI) ordains specially the payment of debts by him who takes the widow under particular circumstances: there is consequently no vain repetition. CĀTYĀYANA directs payment by him, who has taken the widow, if there be a son living but incompetent to the conduct of affairs (CLXXIV 2) ; in another text (CCXXII) he directs, that the debt of one, who had no male issue, or whose son



son is deceased, shall be paid by him, who has the care of the widow : there is consequently no *vain* repetition. It follows, that he, who enjoys a disloyal wife of another description, need not pay her husband's debt.

THAT is liable to objection ; for the preceding text of NA' REDA (CLXXII) would contain a needless repetition of the text last cited (CCXXIII). That point should be examined. This description of women is greatly blamed by legislators. That the wives of *Bráhmaṇas*, and other virtuous women, do not so act, may be learnt in the discussion of the duties of man and wife.

WHEN a son competent *to the management of affairs* is living, and there is also a guardian of the widow, the debt must *in general* be paid by the son alone, as has been already mentioned. From this rule CA'TYA'YANA propounds a particular exception.

#### CCXXIV.

CA'TYA'YANA:—SHOULD a widow, who has several property, take the protection of another man without the assent of her son, her property may be seized by that son, if there be no daughters :

2. He may seize it to discharge debts, but never for his own gratification, since he cannot compel his parents to pay any thing for an improper cause.
3. OF that woman, who has male issue, but deserts her son though opulent, MENU declares, that her son may take the peculiar property and discharge therewith his father's debts.

“ WITHOUT the assent of her son ;” or against his consent. “ Who has several property ;” who has considerable female property. “ If there be no daughters ;” on failure of daughters.

The *Retná:ra*.

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THIS meaning is this ; if a woman, possessing several property, take the protection of another man against the consent of her son, that son may seize her property ; but he can only do so when he is unable to discharge debts out of his own property, and not for his own gratification, since he cannot compel his parents to pay any thing for an improper cause ; that is, he cannot possess himself of the property of his father or of his mother for the accomplishment of an unfit purpose. Here the discharge of debts is merely an instance of indispensable duties. The debts may be his own or his father's. But he can only do so, if there be no daughter ; for, should there be daughters, they are entitled to their mother's several property : and this supposes female property, such as presents given at the bridal procession, and on other occasions : the distinctions of *such property* will be noticed in the chapter on the property of women, under the title of inheritance. It may be here noticed, that her recourse to another man must be considered as equivalent to the natural decease of the mother. But, at the option of the son, her title to several property may depart or subsist, under the authority of the text ( Book V, v. CCCCv 1 and 2 ).

IF a woman, deserting her son though capable of *protecting her*, take her several property and recur to another man without the consent of her son, that son, seizing even her several property, may discharge debts therewith : such is the sense of the third verse ( CCXXIV 3 ).

By the expression " though opulent " it is shown, that, if she desert an indigent son, assuredly that son may seize her several property.

*The Retnâcara.*

" WHO has male issue " describes the woman. From the particle in the phrase " seizing even her several property," it follows, that, if any part of his patrimony have been taken, assuredly he may seize that. The debt *to be paid* should be the debt of his father ; for the text specifies " his father's debts". The commentator says, " assuredly that son may seize her several property ; " here " for the payment of debts " should be subjoined : and this is evident from the text. The term translated " opulent," but literally signifying " capable," here imports possessing wealth ; " incapable " signifies moneyless.

moneyless The difference is this, if she deserted an opulent son, he can only seize her several property for the discharge of his father's debts; but, if she abandon an indigent son, he may seize it for payment even of his own debts. But, if the woman have no several property, the son alone must discharge the debt. This NĀREDA declares.

## CCXXV.

NĀREDA:—BUT, if a woman, who has male issue, *but no several property*, desert her son and recur to another man, her son alone must pay the whole debt of her *deceased* lord.

IF she desert an opulent *or capable* son, and take the protection of another man, without *carrying* any former property, her son alone must pay the debt contracted by her *deceased* lord

The *Retnācara*.

CONSEQUENTLY the construction is, her son is liable for, and must pay, the debt of her lord: and that, provided the son be competent *to the conduct of affairs*, else he, who takes the widow, would be liable for the payment of debts: hence the commentator adds "*capable or opulent*." It has been declared (CLXXII), that a son, not competent *to the management of affairs*, must discharge the debt on failure of a guardian of the widow, by this text it is declared, that a son competent *to conduct affairs* must discharge the debt, although a man have taken the widow: consequently there is no vain repetition. The debtor being dead, his son competent *to manage affairs* must pay the father's debt out of the several property of his adulterous mother, or out of his own property, whichever may be practicable: this is shown by what has preceded.

## CCXXVI

NĀREDA:—BUT if a woman take the protection of another man, *carrying* her riches and her offspring, he must pay the debt of her husband, or abandon such a woman.

"CARRYING her riches;" possessing considerable wealth. "Her hus-

band;" her wedded lord. Or, to avoid the payment of the debt, he must abandon such a woman, who brings her offspring and her wealth.

The *Retnâcara*.

#### CCXXVII.

CĀTYĀYANA:—IF a woman, having an infant son and much wealth, seek another protector, he, whose protection is taken, must pay the debt of her husband: this law is declared in respect of women, who have infant sons.

HERE the term employed (*bhartr̥*) signifies one who maintains her, *not one who marries her*. "Seek," or recur to, 'for support:' the texts should be so supplied. Consequently the guardian, to whom the mother of an infant son, but possessing much wealth, recurs for the support of her son and herself, must, if he accept the trust, pay the debt of her husband out of her property; or, paying it out of his own property, he shall afterwards obtain reimbursement. Such is the sense of the text: and he must also maintain both the mother and son. There is no vain repetition of the preceding text (CLXXIII). And in this case, the guardian does not take the assets; for the woman alone has the care of the goods. Thus we explain the law.

WHEN the debtor is living, but is mad, has been long absent in a foreign country, is an idiot or the like; in a word, is incapable of discharging debts; in that case, his debt shall be paid by his son alone, as has been already mentioned: but, if he have no offspring, what should be ruled? On this point the same legislator propounds a law.

#### CCXXVIII.

CĀTYĀYANA:—THE debts of men long absent in a foreign country, of idiots, madmen, and the like, who have no male kindred, and of religious anchorets, must be paid, even during their lives, *but without interest*, by such as have the care of the debtor's wife and goods.

By such as have taken the wife and the goods appertaining to a man long absent

absent in a foreign country, and so forth: and this must be understood, according to circumstances, as intending also outcasts and the like.

MANY sages have declared generally, that the debt must be discharged by him, who takes the wife of the debtor; a special rule is here propounded. A man has two wives; one, taking her offspring and her wealth, gives herself to another man saying, "I am thine;" and the other, who possesses no wealth, takes the protection of a guardian; what is the rule of decision in this case? It is answered, since he, who takes the wife with effects, in fact holds assets, the debt must be discharged by him; but, if both be in the same situation, it must be paid in equal proportions by both. This is the import of the former text (CCXXVI). But, if the receipt of effects were previously unknown, and the creditor exacted immediate payment from him, who had the care of his debtor's wife, after which the receipt of effects is discovered, then indeed the payment made by the guardian of the wife is not legal, because it was exacted from a person not justly liable; he may therefore recover his money from the creditor; and the creditor shall obtain his due from him alone, who holds assets: the holder of assets may be compelled to reimburse the guardian of the wife. Such is the proper mode of adjustment in forensick practice.

A CASE may be here stated. A certain dishonest surety for payment asked a loan of a moneylender, in the name of a certain borrower; and the lender, fixing stipulated interest at the rate of two *pañās*, sent the loan to the borrower through the hands of the surety. Bringing the sum borrowed, the surety told the borrower, "he will not lend the money without stipulated interest at the rate of four *pañās*." Urged by distress, the borrower agreed to that interest and accepted the loan. At the time of payment, the debtor delivered to the surety the sum due on a computation of interest at the rate of four *pañās*; but the surety paid the creditor at the rate of two *pañās*. After a few days the whole circumstances were discovered. The creditor therefore demands the greater interest from the surety; the debtor also claims the excess from the surety; and the surety refuses to pay it to either of them. What should be the rule of decision in this case? The answer is, the creditor can have no right to receive greater interest than such

as he stipulated when he made the loan, the surety is not entitled to obtain interest on another's money, it is therefore reasonable, that the debtor should recover the sum erroneously paid

It should not be asked objectively, why should not the debtor pay the interest stipulated by him, for the sake of preserving uprightness *in his dealings*? Deceived by the surety's words, the debtor made the promise before the surety, not before the creditor. That promise only, which was made by the surety, as his representative, in the presence of the creditor, is efficient, not the promise originating in error caused by the surety's fallacy. Again, the creditor may have accepted less interest through tenderness excited by the appearance of distress in the debtor, in that case, the remainder shall benefit the debtor alone, for it was in a manner relinquished to him. Yet, if the debtor voluntarily pay it, the other shall receive it by his voluntary act. But, when an intermediate person himself borrows money and lends it to the *ultimate* debtor, he is not a surety, but debtor to one and creditor of another. In such a case therefore, he is entitled to the interest at the rate of four *pasas*

If a debtor had no son born to him, and leave no widow, nor assets, by whom shall his debt be paid? By no one. But, if the debtor gave a pledge on contracting the debt, and his great grandson be living, the debt should be paid by that great grandson

#### CCXXIX

YAĀJNYAWALCYA.—A DEBT, secured merely by a written contract, shall be discharged, *from a moral and religious obligation*, only by three persons, *the debtor, his son, and his son's son*, but a pledge shall be enjoyed until actual payment of the debt *by any heir in any degree* \*

BUT if the great grandson do not wish to redeem the pledge, those, who would be entitled to inherit on failure of great grandsons, may, in the order of succession pay the debt and take the mortgaged property. If no

\* Already cited at v XXXI III 2, and part ally at v CXI

one chuse to redeem it, the pledgee may continue to enjoy it, after acquainting the king, the sum cannot be forcibly exacted from the great grandson or remoter heir, because, not having yet taken the assets, he is not liable for the debt.

THIS doubt here occurs if the debtor contracted the debt giving a pledge for custody only, and he, his son and his son's son die, but a great grandson survive; in that case the debt need not be paid by the great grandson; for he does not enjoy the mortgaged property, and the pledgee is permitted to enjoy property pledged, so long as the debt shall remain unpaid (CCXXIX). but the great grandson alone can take the pledge, because it is the chattel of his great grandfather. The apparent difficulty may be thus reconciled "but property pledged shall be enjoyed" is an expression merely illustrative of a general sense, in the case supposed the payment of the debt is alone requisite. Or the word pledge may there signify a pledge given in lieu of interest as well as a pledge not to be used, and the word "enjoy" suggests occupancy as well as fruition hence there is no difficulty. Else it would be inconsistent with reason, that, after advancing his own property and safely keeping the pledge for a long time, the creditor should be obliged to restore it to the great grandson of his debtor without receiving his due. Since the great grandson or remoter heir holds assets when he has received the pledge, he is bound to pay the debt.

#### CCXXX.

VRĪHASPATI:—HE, who, having received a sum lent or the like, does not repay it to the owner, will be born *hereafter* in his creditor's house, a slave, a servant, a woman, or a quadruped.

THE term here employed signifies a loan. "Or the like" comprehends deposits and so forth

The *Retnācara*.

"To the owner," to the former master of the sum, that is to the creditor and so forth. Therefore a debt must necessarily be paid by a son or

other descendant, lest his father or ancestor become a slave; otherwise hell awaits him, because he has not followed the conduct prescribed. Thus may the law be concisely stated.

WHEN the creditor is dead; or has become a religious anchoret or the like, the debtor should pay the sum to his son or other heir; on failure of the nearest, to the remoter heir successively, down to the learned priest. But, if there be no heir, nor any learned priest in that country, or if he refuse the payment tendered, NĀREDA propounds the rule to be observed in that case.

## CCXXXI.

NĀREDA: — IF a creditor of the priestly class die leaving issue, *the king shall* cause the debt to be paid *to them*; if he leave no issue, to his near kinsman; if he leave none, who are near, to those who are distant, *paternal or maternal*;

2. If he leave no heirs near or distant, *nor persons connected by sacred studies*, the king shall bestow it on worthy priests; but if none such are present, let him cast it into the waters: *the debts of other classes, in similar circumstances, he may seize for himself.*

WHAT is due to a priest, whether it be a gratuity or similar claim, or the like, must, on failure of him, be paid to his son or other descendant, in the regular order of succession. That is intimated by the phrase "leaving issue." On failure of issue, to his near kinsmen; on failure of them, to distant kinsmen, allied to himself, to his father, or to his mother: this will be explained under the title of inheritance. On failure of these, it should be given to learned priests; or on failure of them, "let him cast it into the waters." What is due to men of the military and other classes, the debtor should, by parity of reasoning, pay to the heirs in regular succession, delivering it, on failure of nearer heirs, to the next remoter heir, down to distant kinsmen: but on failure of these, it must be paid to the king, under the rule of VIṢṆU concerning hereditary



ble property, " the wealth of all, but priests, *who die without heirs*, goes to the king (Book V, v CCCCXVII) ' But the property of priests may on no account be taken by the king In this MISRA, BHAVADEVA and others concur, and BAUDHAYANA, quoted in the *Retnacara* under the title of inheritance, *forbids the sacrilege* That text (Book V, v CCCCXLIV) is expounded, " the property of *Brahmanas* is the most exalted poison to him who seizes it ' From the word " never " it appears, that the property of *Brahmanas* must not even be received in the form of a tax Accordingly, in his gloss on the institutes of PARASARA, MA'DHAVA cites the following texts of MENU

## CCXXXII

MENU —A KING, even though dying *with want*, must not receive any tax from a *Brahmana* learned in the *Vedas*

MENU —THE king, having ascertained his knowledge of scripture and good morals, must allot him a suitable maintenance, and protect him on all sides, as a father protects his own son.

THE king must allot him (that is, the priest) a suitable maintenance, or the means of subsistence, and protect him on all sides, from robbers, rogues and the like However, the direction in the text of NAREDA, " he shall bestow it on worthy priests, or cast it into the waters," is a law respecting the payment of debts

## CHAPTER VI.

## ON REDRESS FOR NON-PAYMENT.

THIS, according to the author of the *Mitâksharâ*, may be also considered as the rule for receipt of debts by the creditor.

MENU:—WHAT has been practised by learned and virtuous men of twice-born tribes, if it be not inconsistent with the legal customs of provinces or districts, of classes or families, *let the king establish*.\*

“ LEARNED ;” well read ; AMERA interprets it wise or intelligent. “ Virtuous ;” endued with honesty ; not deceivers. “ Twice-born ;” *Brâhmanas, Kshatriyas, and Vaishyas* : what has been practised by such men ; if it be not inconsistent with the legal customs of that country, of families and classes, *let the king establish*, or confirm the practice, adopting it as un-  
seen or unrecorded law. The text must be so supplied.

CULLŪCABHATTĀ.

IN that gloss the meaning of the expression “ confirm the practice” is, that he should decide, according to that practice, a doubtful case, for which no seen or recorded law provides.

CCXXXIII.

MENU:—WHEN a creditor sues before him for the recovery of his right from a debtor, let him cause the debtor to pay what the creditor shall prove due.

\* Already cited at v. L.  
4 R.

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“ FOR the recovery of his right from a debtor , ’ to obtain the sum lent The king, on application from the owner of the sum, *for the recovery of it*, shall compel the debtor to pay to the creditor what he shall prove due by written or oral evidence or the like

CULLŪCABHATTA.

ON application from the creditor for the recovery of what is due by the debtor, the king shall by various means compel the debtor to pay the creditor's right, or the sum which he proves by evidence to be due from the debtor

CHANDESWARA

IN what mode payment should be enforced, MENU declares

#### CCXXXIV

MENU —BY whatever lawful means a creditor may have gotten possession of his own property, let the king ratify such payment by the debtor, though obtained even by compulsory means.

“ BY compulsory means,” by seizure, or distress.

CHANDESWARA and CULLŪCABHATTA.

THE debtor or his assets may be the subject, to which that expression refers The same lawgiver declares the several means by which payment may be enforced

#### CCXXXV

MENU —BY the mode consonant to moral duty *or by the mediation of friends*, by suit in court, by artful management, or by distress, a creditor may recover the property lent , and, fifthly, by legal force.

*He may recover it by the methods last mentioned, if payment cannot be obtained by the several methods first mentioned*

MIS-1

ANOTHER

ANOTHER mode will be subsequently mentioned. VRĪHASPATI explains the mode consonant to moral duty.

## CCXXXVI.

VRĪHASPATI:—BY the interposition of friends and kinsmen, by mild remonstrances, by importunate following, or by staying constantly at the house of the debtor, he may be compelled to pay the debt: this mode of recovery is called a mode consonant to moral duty.

BY the persuasive discourse of those who are friends and intimates of the debtor, or his kinsmen, such as maternal uncles and the rest; by mild remonstrances or honied language of the creditor himself; by importunate following or pursuit; by staying constantly at the house of the debtor, or by abiding near him, that is by the creditor's fasting and the like at the house of the debtor; by all these methods the debtor may be compelled to pay the debt to the creditor: this mode of recovery, by the interposition of friends and the like, is called a mode consonant to moral duty. This is merely an instance; it comprehends the interposition of honest strangers with discourse exciting a sense of shame, and so forth.

CĀTYĀYANA explains the mode of recovery by suit in court.

## CCXXXVII.

CĀTYĀYANA:—A DEBTOR, being arrested *and freely acknowledging the debt*, may be openly dragged before the publick assembly, and confined until he pay what is due, according to the immemorial usage of the country.

THE restraint of the debtor by the creditor before the publick assembly, until he pay the sum due, is the mode of recovery by forensick proceeding.

The *Retnācara*.

HE may be detained and confined; he may be stopped and prevented from going where he lists, and so confined. "Before the publick assembly;" otherwise

otherwise he might allege, that he was excessively beaten, and so forth. "According to the immemorial usage of the country;" according to the usage, which subsists in that particular country. For example; in some countries creditors cause their debtors to be arrested and confined by the king's officer; in others, they themselves, or their servants, restrain the debtor; in others again, they confine them in fetters.

Or a distinct method of recovering debts is called the mode of recovery consistent with the immemorial usage of the country; or it falls under the description of violent compulsion, and will be hereafter mentioned: "they must be made to pay their debts according to the custom of the country" (CXLII). It is limited by the restriction of the immemorial usage of the country. According to this opinion the mode of recovery by suit in court or practice must be otherwise explained. Thus the *Médhātī'bi* has this remark; 'from a debtor, who is indigent, payment must be obtained by a practical mode; and that practice consists in personal labour and the like. For instance; a creditor, lending a further sum to an indigent debtor, may employ him in his regular occupation, such as husbandry or the like: the produce thereby obtained should be delivered to the creditor.'

THIS, according to the preceding opinion, is a mode of recovery similar to that of suit in court described by CĀTYĀYANA; it falls under the same description; for the text of CĀTYĀYANA is merely illustrative. In fact, a debtor, being restrained, or being detained for work, otherwise than in the custody of the king's officer and the like, may be employed in his regular occupation, such as agriculture and the like: and in that case, the creditor may not employ a *Bráhmāna* in menial service, nor a *Vaisya* in military duty; in some countries he may employ a *Bráhmāna* in agriculture or commerce, but he may not employ a barber or a mixed class in carrying burdens. To indicate this and other circumstances the legislator adds, "according to the immemorial usage of the country." That intends also the customs of families, and the usage established by law, and the like. Consequently the meaning is, a creditor may not employ his debtor in work inconsistent with usage. Again; in that country, where men of certain classes do not carry in a litter men of certain other classes, the creditor may

may not employ one of such a class in carrying the litter of a man of such other class.

By the phrase, "before a publick assembly," it is intimated, that the persons assembled should interpose to prevent such irregular employment. The possible accusation of maltreatment is thereby obviated, as before. Or the expression, "before a publick assembly," is intended to suggest the approbation to be obtained from impartial persons in this form, "this work, which is not inconsistent with local usage, the debtor must perform;" it obviates the possible accusation of infringing a customary right. This and other points may be deduced from reasoning.

"UNTIL he pay what is due;" consequently, if the debt were discharged, the creditor must omit the restraint and other measures. This is mentioned *incidentally*, wandering from the real subject.

VRĪHASPATI explains artful management.

#### CCXXXVIII.

VRĪHASPATI: — WHEN a creditor, with an artful design, borrows any thing of his debtor, or withholds a thing deposited by him or the like, and thus compels payment of the debt, this is *called* legal deceit.

"WITH an artful design;" by stratagem. For instance; the creditor borrows effects of the debtor on such pretences as the following, and thus compels payment of the debt; "a guest of high rank is come to my house, lend me a metallick caldron for his service;" or on this pretence, "a kinsman of the bride is come to visit the bridegroom, lend me silk clothes, ornaments and the like, to array the bridegroom."

"WITHHOLDS a thing deposited by him;" or any thing subsequently intrusted. For instance; a creditor, who had formerly lent ten *cārṣāpanas*, but cannot recover the sum, resolves on using artifice, and the debtor is desirous of borrowing a further sum; the creditor tells him, "I will further

lend you fifty *panas* of copper, and you shall pay the whole at once, but you must give a pledge." The debtor, so addressed, delivers a pledge of greater value, and the creditor, giving a small part of the sum, tells him, "I will give the whole sum the day after tomorrow." On that day he delivers the sum diminished by the amount of his former debt, or attaches a sufficient part of the pledge. In such a case he withholds a thing subsequently intrusted. The term "and the like" comprehends deposits and the rest. In such a case there is not the absolute sin of wronging one who has reposed confidence in him, provided he do not take more than his due.

AGAIN; a dishonest debtor, delivering a pledge for custody only, receives a loan, but refuses to pay the debt at its term; the cunning creditor mentions in various places, "his pledge, which was in my possession, has been stolen by thieves." On hearing this through successive report, the debtor tenders the principal with interest, and demands his pledge; and that creditor delivers the pledge, *and takes the sum tendered*. In this case the fallacy must be considered as an artifice. Such a mode of recovering debts is called legal deceit. Deceit (*upadhi*) is synonymous with artifice.

VRĪHASPATI also explains distress.

#### CCXXXIX.

VRĪHASPATI:—WHEN he forces the debtor to pay by confining his son, his wife or his cattle, or by watching constantly at his door, this is called lawful confinement.

THE method of recovery by the restraint of his wife, his son, or his cattle, or by watching at his door, is called lawful confinement, or distress. This is a mere illustration; the ultimate sense is, 'causing him to suffer inconvenience by any mode.' However, that should not be done, by which he may be exposed to great danger. This we hold reasonable.

THE same legislator explains legal force.



## CCXL.

VRIHASPATI:—WHEN, having tied the debtor, he carries him to his own house, and, by beating or other means compels him to pay, this is called violent compulsion.

BINDING him and carrying him to his own house, he may threaten to beat him and so forth ; frightened by those menaces, the debtor pays the debt. in such a case, the threat of blows, preceded by confinement, is a mode of recovering debts, which is called violent compulsion or legal force. The carrying of him to his own house is not requisite ; for the threat of beating him on the road, or at some other place, is violent compulsion. The binding may be no more than *forcible* seizure ; consequently the threat of blows, after catching him by the hair, must be deemed violent compulsion.

VIOLENT compulsion is a mode of recovery defined as consisting in blows and the like after carrying the debtor to his own house.

The *Retnācara*.

ACCORDING to this author even blows are authorized. Under the term “and the like” is comprehended harsh reproof, or verbal abuse and the like.

## CCXLI.

CAṬYĀYANA:—BY beating, or by coercion, a creditor may enforce payment from his debtor, or by work, by suit in court, or by mild remonstrance : first *duly* deliberating on the method to be followed.

2. Or let him obtain the sum due by artifice, or distress.

IN this text “beating” signifies legal force or violent compulsion : “coercion,” staying constantly at the house of the debtor or importunate attendance. The term is so explained in the gloss of the *Retnācara* : in effect it denotes the creditor himself refraining from food and the like ; and that

that falls within the mode consonant to moral duty, as described by VRI-  
 HASPATI. CHANDÉSWARA explains "work" or *proper conduct*, by an  
 example : for instance, reflecting, "he is very dishonest and will not repay  
 the loan he receives from me : I must recover the debt by blows and other  
 suitable methods ;" the creditor adopts proper measures. Ultimately it sug-  
 gests both means, *proper conduct*, and *obliging the debtor to work* ; this last  
 falls under the description of mild methods : it does not vary from the  
 sense of MENU's text, Or "work" may bear the *literal* sense of labour : it  
 shall be subsequently discussed under the text of YAJNYAWALCYA. But  
 "suit in court," which has been explained as a *similar mode*, is also noticed by  
 CATYAYANA. "Mild remonstrance : " affectionate language with praise  
 and the like. "Deliberating ;" determining after due deliberation.

CATYAYANA next declares from what debtor payment should be obtain-  
 ed, in what mode.

## CCXLII.

CATYAYANA:—By mild expostulation let a creditor procure  
 payment from a king, from his master, and from a priest ;  
 but from an evil minded man or an heir, by some artful  
 contrivance.

2. MENU ordained, that merchants, cultivators of land, and  
 artists, must be made to pay their debts, according to  
 the custom of the country ; but that a creditor might  
 enforce payment from dishonest debtors by violent mea-  
 sures.

"HEIR ;" inheritor. In some places the text is read, "BHRĪGU ordained."

He ordained, that merchants, cultivators of land, and artists, must be  
 made to pay their debts, according to the custom of the country.

*The Retnacara.*

"A PRIEST" or spiritual parent : but if any other than a priest happen  
 to

to be spiritual parent of the creditor, he also is suggested by the word "priest" taken illustratively. Again; the word "priest" (*vīpra*) may be taken in the simple sense of venerable, for it has that import: and a person, to whom veneration is due from the creditor, is meant. Why are the "king" and "the creditor's master" separately mentioned? The answer is, because disrespect to the king, or to his own master, produces evil in this world; to intimate this, they have been separately mentioned. It may be here remarked, that in some instances even a *Śūdra* is venerable.

**YĀJNYAWALKYA**:—SCIENCE, moral conduct, age, kindred and wealth, entitle men to respect; and most that, which is first mentioned in order: with these qualities, even a *Śūdra* deserves respect in his old age.

WITH these qualities in an eminent degree, namely science and the rest, even a *Śūdra* is entitled to veneration, when his age passes ninety years. Thus **MENU** expresses, "even a *Śūdra* is venerable, if he have entered the tenth decad of his age."\*

The *Dīpalcā*.

SHOULD many venerable persons be assembled, respect must be first shown in society to the learned man; next to him, whose conduct is pure; afterwards to the aged man; next to one, who has learned kinsmen and the like; and lastly to the wealthy man. And this concerns priests: valour and the like chiefly entitle a soldier to respect; and riches, a merchant. But here, should many learned men be assembled, the precedence must be regulated by the preeminence of their respective sciences; for the *Srī Bhāgavata* records, "That indeed is science, by which the knowledge of God is advanced." Science, consisting in knowledge, which advances diligent obsequiousness, entitles a *Śūdra* to respect; or skill in arts, the science of medicine, or the military art. From him, payment must be procured by mild remonstrance, tender expostulation, or the interposition of friends and kinsmen. Surely, from a soldier and the rest, payment must be procured by this mode. "An evil-minded man;" one, who is dishonest but not unentitled to respect. It is the

\* Chapter 2, v. 137.

same in regard to soldiers and the rest, who cannot be treated with disrespect. It is also the same in regard to kindred, pupils, and the like. "

"AND artists," (CCXLII 2) the particle suggests the comprehension of *Vaiṣṇas* and the rest. "Dishonest debtors:" averse from the discharge of their debts, not afraid of acting immorally, ignorant and so forth, but not entitled to respect; in a word, *Sūdras* and the rest. Distress must be employed, when violent measures cannot be adopted. The term used in the text signifies violent measures.

IN defining the mode of recovering debts by suit in court (CXXXVII), it is said "arrested, dragged *and* confined." How can that be? For, should the ejection of urine and feces, and other corporeal necessities, be prevented, life could not be preserved. For this, CA'TYA'YANA delivers a precept.

### CCXLIII.

CA'TYA'YANA:—WHEN a prisoner has need of ejecting urine or feces, he should either be followed *at a distance*, or dismissed in fetters:

2. Should he have given a surety, he must be released each day, at the hour of meals; and at night, if a surety have been given to such effect:
3. But, if he do not tender a surety for appearance, nor avail himself of such a surety, he must be confined in jail, or delivered to the custody of keepers.
4. A VENERABLE, trustworthy and virtuous man shall not be confined in jail; unrestrained, he must be released, or *be dismissed* under the obligation of an oath.

"WHEN he has need &c." when he intimates such occasion, he must be followed, *or watched*, at a distance from the place where urine and feces are ejected. "Or dismissed in fetters;" bound by chains and the like. Two disjunctive

disjunctive particles, here employed, are intended to show distinct rules governed by the nature or amount of the debt, and by the character of the debtor.

WHAT should be done at the hour of meals? The legislator adds, "should he have given a surety," should a surety have been given, or a sponsor assigned, he must be released each day, at that hour of meals, for which the surety became answerable. Consequently, after taking a surety for the hour of meals, he should be daily released. In the *Retnâcara* the terms are expounded, a prisoner from whom a surety is taken. From the expression "each day," it appears, that a surety should be taken each day, that is at the hour of sunrise. Still, however, the terms, "and at night," authorize the release of a debtor at night also, when a surety has been previously taken: and the word "day" may signify a day and night. A synonymous term, bearing a general sense, occurs in the text concerning hair-interest (XXXV 4). Yet the acceptation may follow the texts of sages concerning attendance on cattle; for instance, the text cited in the *Prâyaścitta tatva*.\*

THIS must be understood, when he cannot obtain his repast without giving a surety. "And at night;" even at night, if a surety say, "this man shall be produced by me, let him go home at night:" in that case he should also be released at night. But, if no man become surety for him, because he is suspected of dishonesty; or if he do not seek bail; or, having given a surety for appearance, if the debtor, being released, do not again apply to his surety; what should be done in these cases? The legislator says, "if he do not tender a surety for appearance (if he cannot obtain a surety), or do not avail himself of such a surety" (or do not so act as is proper after finding bail); or, having given bail and being liberated by the creditor, if he do not again attend his surety, that is if he conceal himself from him and so forth (both may be understood from the ambiguous terms of the text); in these cases, should he be at any time discovered after laborious search, he shall be confined in jail. That is, he shall be confined

\* Cited here at full length, but omitted in its proper place, Book III, Chapter IV. (See note to v. IX of that chapter).

at night within closed gates and the like ; but at the hour of meals he must be followed by the creditor himself, or be suffered to take his repast, bound in fetters or the like: in the same manner he should be allowed to bathe, but, if possible, he should take his repast within the prison. If there be keepers of the jail, let the creditor imprison him there, after giving notice to the jailers. But, when the creditor himself enforces payment of the debt, he may confine him in his own house.

BUT, if the debtor be not liable to confinement in prison, or if he be trustworthy, the creditor shall not confine him in a jail. This the legislator declares (CCXLIII 4). Should such a venerable person be not trustworthy, or, though *in general* trustworthy, if confidence be not placed in him, he must be dismissed under the obligation of an oath. This and other points may be argued.

CHANDĒSWARA and the rest give a similar exposition, but in his gloss it is said, ' if the debtor do not tender, or if he refuse to give, a surety for appearance or other sponfor.' The word ' other' intends a surety for payment. Consequently " surety for appearance" is considered as merely illustrative. The term (translated do not " avail himself") is here explained as signifying " refuse." The disjunctive particle has a reference to the word " tender," which occurs in the text. His refusal may be in this form, " how should I give a surety, I am not trusted?" Such a speech, when he is arrested by the creditor or the king, *is deemed a refusal*. But in fact a surety for payment can hardly be supposed *in the present case*. For instance; should any one say, " release this man, I will pay what is due by him," the creditor may reply, " the term of payment has already elapsed, discharge it therefore immediately:" with this notion, a surety for appearance *only* is mentioned. However, since the term *of payment* may be enlarged through the interposition of mediators, it is possible, that a surety for payment should also be given. The opinion of CHANDĒSWARA may therefore be justified. The confinement of a trustworthy man is unnecessary, because he can give a surety.

## CCXLIV.

VRĪHASPATI:—FROM a debtor, who promises payment, the  
debt

debt may be recovered by mild remonstrance and the like, and by *employing him in work*, by the mode of *moral duty*, by legal deceit, by violent compulsion, and by confinement at home.

"By mild remonstrance and the like;" since the interposition of friends and the rest, and the withholding of a deposit and the like, are comprehended under the term "and the like," those modes of recovering a debt, which are consonant to moral duty and so forth, are alone exhibited: the legislator himself details those very modes of recovery by mild remonstrance and the rest; "by the mode of moral duty, by legal deceit &c." "By confinement at home;" by the mode of lawful confinement: for he himself denominates confinement at home, the mode of lawful confinement. "By *employing him in work*;" by labour. On this consideration, CHANDÉSWARA has not admitted the enunciation of the word "labour" in the definition of violent compulsion. By him four methods only are mentioned. Suit in court falls within the mode of violent compulsion. There is not consequently any contradiction to MENU, who notices five modes. CĀTṬYĀYANA has not separately mentioned distress or lawful confinement. It falls under the description of compulsory means; *but* is a slighter compulsion, as has been already remarked.

By what means shall payment be obtained from him, who has no assets? Wanting funds, what can he pay? Therefore does MENU propound a mode of discharging debts in such cases.

#### CCXLV.

MENU:—EVEN by personal labour shall the debtor pay what is adjudged, if he be of the same class with the creditor, or of a lower; but a debtor of a higher class must pay it *according to his income* by little and little.

A DEBTOR of equal or inferior class to the creditor should by labour put himself on a par with his creditor; the parity consists in mutual exoneration from debt: consequently the sense is, he should discharge the debt. Before the debt

was discharged, there was this disparity, that one was creditor, the other debtor, but the debt being discharged by means of labour, on a computation of the hire for work performed, that disparity vanishes. Work must be performed by him alone, the rule of whose class, country, and family, is not thereby infringed as has been already remarked. But, if the creditor be of the commercial class, and the debtor of the military class, the lawgiver declares what should be done, "but a debtor of a higher or *superiour* class must pay it by little and little." Here it should be considered, that the debtor of a higher class should be employed in labour consistent with his regular occupation, at some other suitable place, not at the creditor's house, after assigning a sufficient portion of his earnings for the maintenance of his family, the remainder should be delivered to the creditor.

BUT, if the creditor, as well as the debtor, be of the sacerdotal class, may the creditor oblige that debtor to work for him, since he is of equal class? or may he not so employ him?

## CCXLVI.

VRĪHASPATI — If the debtor be really poor, the creditor may take him to his own house, and oblige him to work in distilling spirits and the like, but a priest must be made to pay gradually.

"In distilling spirits and the like;" since the text coincides with that of MENU, a debtor of equal or inferior class is intended. But the subsequent phrase intimates, that a *Brahmana*, even though indebted to a man of the same class, shall not be compelled to work for, if it supposed him indebted to a *Cshatriya* or the rest, the text would be nugatory. The reason is, that *Brāhmanas* are eminent in respect of each other, for their greatness is unlimited.

## CCXLVII.

YAJÑYAWALKYA — He may compel a poor debtor of a low class to do work by way of paying his debt but a priest, if indigent, must be made to pay gradually according to his income, or *casual gains*.

"BY



“ By way of paying his debt ,” for the discharge of his debt. “ According to his income ,” according to the acquisition of funds.

The *Retnacara*.

BUT we expound “ a low class,” a lower class than the sacerdotal tribe, namely the military class and the rest “ Gradually , employing a priest in his regular occupation, as sacrificing and collecting alms , or, if that fail, in bearing arms and the like , and out of his earnings, supplying the maintenance of his family with frugality, the remainder should be applied to the discharge of his debt In proportion as a surplus remains, should the debt be discharged and this appears from the expression, “ a priest must be made to pay gradually ’ But here “ a low class ’ is taken as intending also an equal class , and “ priest,” as intending a superiour class This is likewise remarked in the *Mita shara* The text also concerns a debtor of equal class as well as of inferiour class CATYA YANA declares it expressly

#### CCXLVIII.

CATYA YANA —THE creditor may exact payment by labour from a debtor of the military, commercial, or servile class, if he be either equal to himself or lower.

By the enumeration of “military, commercial and servile classes,” it is here intimated, that payment of a debt should be procured from a man of the priestly class by another mode and that has been already propounded, as declared by VRĪHASPATI and YAJNYAWALKYA The term “servile class” intends generally any very low class, and comprehends therefore mixed classes, such as *Mūrdhabhishicta* and the rest The particulars of these classes should be delivered under the title, where tribes are considered

HE should only compel his debtor to perform work, which is not reprehended, as has been already hinted But, if he oblige him to perform work, which is reprehended, what should follow ?

#### CCXLIX

CATYA YANA : — BUT if he compel the debtor to do any improper

improper work not stipulated at first, he shall be fined in the first amercement, and the debtor shall be released from his demand.

“ Nor stipulated at first,” not mentioned when the debt was contracted. For instance, if the debtor said “ I will pay thee this debt by any work, even the most abject, if I cannot discharge it by honourable means,” in that case such work has been stipulated : but, if he simply say, “ I will pay the debt,” or “ I will discharge it by labour,” in that case, should the creditor oblige him to perform such work, which has not been stipulated, the creditor shall pay the first amercement, that is a fine denominated the first amercement. That fine is explained by *Menu*, “ Now two hundred and fifty *panas* are declared to be the first amercement.” This may be properly discussed under the title of fines.

THAT sort of labour is reprehended, which is not authorized by the system of law. For example, the regular employment of a *Cshatrya* is the use of arms offensive and defensive, but, if that fail, commerce and certain other occupations are authorized by the law : work of a different nature is reprehended. But to a *Cshatrya*, who abandons not his own profession, however distressed, commerce and the rest are also abject occupations. Yet to him, who has undertaken commerce and the like, or is willing to undertake it, such an occupation is not a blamable employment. However, service and low mechanical arts are abject occupations. The same should be understood in regard to men of the commercial class and the rest : and that is ascertained from practice. This has been sufficiently explained.

It should be here remarked, that a *Brabman*, who subsists even by agriculture, is not considered as following a profession foreign to him : the creditor may not tell him, “ following the profession of arms or the like, and thereby earning money, pay the debt.” Again, daughters, sons and the rest should not be sold : therefore, from parity of reasoning, no debtor, whosoever, can be compelled to sell his children, in as much as the act is immoral.

THE debtor is exonerated from the debt.

The Retractions  
By

By labour alone a debt is fully discharged ; but release from the demand is again mentioned, to show, that in this case the debtor is exonerated, however inconsiderable the work performed.

## CCL.

NAREDA :—SHOULD a debtor be disabled by *famine or other* calamity of the time, from paying the whole debt, he shall be only compelled to pay it *in small sums* from time to time according to his ability, as he happens to gain property.

SHOULD he be disabled from paying the debt, through some calamity of the time, that is, in consequence of famine or the like.

The *Retnācata*.

SOME hold, that this text concerns *Brāhmanas* and debtors superiour in class to the creditor ; for it coincides with the text of MENU and the rest. But, in fact, this text may also be applicable to any case, where the creditor cannot oblige him to work, or where the debtor is incapable of labour.

IT should be here understood, that MENU (CCXXXIII) directs payment to be enforced by the king ; the subsequent text (CCXXXIV) seems also to intend payment enforced by the king. The creditor therefore applies to the king, saying “ this debtor does not liquidate my debt,” the king, finding that the debt is to be recovered from a man of the priestly class, adopts the mode of moral duty, calling the debtor’s intimate friend or the like, he sends him to obtain payment of the debt from that man by mild expostulation, or procures payment by his own mild remonstrances, or suffers the creditor to beset the house of the debtor, fasting there. But, if the debtor be a merchant, he shall only be made to pay the debt according to the custom of the country, the king himself should confine him in the custody of his own officers this and other modes should be understood. But, if the debtor be very contumacious, and one whom the king cannot reduce by reason of his great power, he should bid the creditor procure payment by withholding a deposit or the like. The mode of violent compulsion is

4 W

obvious,

obvious If that be not practised, he should send the creditor to pursue the mode of lawful confinement or distress this mode has been discussed Suit in court, or, as explained in the *Middhatt'hi*, practice of labour, should be followed for the recovery of a debt from a very indigent debtor It consists in this, taking a further sum from the creditor, let the king advance it to the debtor, who must labour in husbandry, commerce or the like, and deliver to the creditor the property thereby gained This appears from a brief examination of the subject

IN these definitions of the modes of recovery, creditor is mentioned indeterminately, but is described as a person recovering his property, as one who had advanced money, as owner of the effects It follows, that these methods are universally applicable to deposits and the like Accordingly, in the chapter on redemption of pledges, "deceit and "confinement" are mentioned in the text of VĀṢPĀTĪ (CII), it thence appears, that the king shall not compel a creditor to restore a pledge to the debtor, by the mode of confinement and the rest wherefore "debtor," in the definition of lawful confinement, must be understood to signify one, who has received property from another

If the creditor do not apply to the king, but himself procure payment of the debt, by some legal mode, such as that of moral duty and the rest, shall he be punished, or not? On this subject MENU declares *the law*

## CCLI

MENU —THAT creditor, who recovers his right from a debtor, must not be rebuked by the king for retaking his own property.

A CREDITOR, pursuing modes of recovery, such as that of moral duty and the rest, in proper cases, shall not be checked by the king such is the sense.

The *Retnācara*

"IN proper cases," pursuing the mode of moral duty, if the debtor be

of the priestly class and the like; deceit, if he be an heir, and so forth: "The creditor shall not be checked;" then surely he shall not be punished. But, if he act contrary to law, a punishment shall be inflicted. This appears from the terms used in the *Retnâcara*; and that punishment may be harsh rebuke or other correction: this can only be discussed with propriety under the title of punishment.

COLLŪCABHATTA expounds "he shall not be rebuked," he shall not be chidden by the king in these terms; "hast thou dared to recover the debt from thy debtor by violent means, without acquainting me?" If there be no reproof, surely there shall be no punishment.

## CCLII.

VISHNU:—A CREDITOR, recovering the sum lent by any *lawful* means, detention, bondage or the like, shall not be reprov'd by the king; if the debtor, so forced to discharge the debt, complain to the king, he shall be fined in an equal sum.

"AN equal sum;" a sum equal to the debt recovered.

The *Retnâcara*.

"DETENTION;" lawful confinement, and suit in court as described by CĀTYĀYANA. "Bondage;" violent means. The term, "or the like," comprehends the other modes of recovery.

## CCLIII.

YĀJNYWALCYA:—He, who recovers an acknowledged debt by his own act, in any of the legal modes to which the debtor has tacitly consented, shall not be blamed by the king; and, if the debtor shall complain of such an act before the king, he shall be fined and compelled to pay the debt.

"ACKNOWLEDGED;" owned.

A CREDITOR, recovering an acknowledged sum, or a debt proved by witnesses or the like, shall not be blamed by the king in these terms, " why didst thou so?" If a debtor, on whom violent means and the like have been used to enforce payment, wickedly complain before the king, he shall be blamed by the king, that is, he shall be fined; and he shall be compelled to pay the debt. This exposition is approved in the *Dipacalikāṭ*. The text, already cited from *VISHNU*, regulates the amount of the fine, he shall therefore be amerced in a sum equal to the debt.

Is not an amercement equal to the amount of the debt inconsistent with the following text of *MENU*?

#### CCLIV.

*MENU*.—THE debtor, who complains before the king, that his creditor has recovered the debt by his own legal act, as before mentioned, shall be compelled by the king to pay a quarter of the sum as a fine, and the creditor shall be left in possession of his own.

It appears from this text, that he shall be fined in a fourth part of the debt. On this *CHANDĒSWARA* remarks, that ' an amercement equal to a fourth part of the sum must be understood, when the offender is unable to pay a larger fine, or is in general virtuous ' Consequently a fine equal to the whole sum is considered as the general rule. But *CULLU'CABHATTA* thus propounds the text, ' should a debtor complain to the king against a creditor, who recovered the debt by his own act, thinking, that he has great influence over the monarch, that debtor shall be fined in a quarter of the debt, and the sum recovered shall be assigned to the creditor ' And that is reasonable, for it was proper, that he should recover the debt by application through some person near the king. In this case, since the creditor may also be charged with a slight offence, a smaller fine is imposed on the debtor. Again: if the debtor be in general virtuous, or be unable to pay a large fine, the same consequence is reasonable, and the exposition, adopted by *CHANDĒSWARA*, may therefore be justified.

YET some think, that, because the institutes of MENU prevail over all other codes, his texts should not be restricted in consequence of a rule of VISHNU. The fine, specified by MENU, must therefore be considered as the general amercement; and according to that text, and restricting the law propounded by VISHNU, his rule must be applied to the case of a very dishonest debtor. That is wrong; for the law, as propounded by MENU, still needs qualification. The rule of VISHNU, *thus expounded*, signifies, that a very perverse debtor, complaining before the king of his creditor's enforcing payment, shall be fined in a sum equal to the debt; it still contradicts the text of MENU, for that signifies, that a debtor, complaining before the king, shall be fined in a quarter of the debt: to reconcile the apparent inconsistency with the rule of VISHNU, "not dishonest" must be given as an epithet to "debtor" in the text of MENU; and the law, propounded by MENU, has needed qualification. This must be admitted by the wise.

BUT, if the debtor be unable to pay the sum by any means whatsoever, wheel-interest may be exacted at the choice of the creditor.

#### CCLV.

VRĪHASPATI:—AFTER the time for payment has past, and when the interest ceases, *on becoming equal to the principal*, the creditor may either recover his debt, or require a new writing in the form of wheel-interest (*chacravṛiddhi*).

"WHEN interest ceases," after accumulating to its limit.

The *Retnācara*.

"AFTER the time for payment has past;" this may be considered as relating to a loan for a specified time. "When interest ceases," concerns a debt unlimited as to time. Hence it appears, that, if a creditor, by violent methods or the like, exact payment of a sum lent for a limited time, before its term has expired, or of a debt for no limited time, before interest ceases, he shall be punished. But, if he can recover it by mild expostulation, no offence shall be imputed to the creditor, as suggested by another text of VRĪHASPATI (CLXVI 2).

“ OR require a new writing” (that is, a written contract) in the form of wheel-interest. Making the doubled sum the principal, and stipulating interest afresh, he may require a new writing, after cancelling the former note.

## CCLVI.

CĀTĀYĀNA: — TWICE the sum lent should always be received by the creditor, *if the debt be of long standing*; but *if the debtor do not pay twice the principal when interest has ceased*, the creditor may again exact *an agreement for interest*.

“ TWICE the sum” is here mentioned on the supposition of a debt consisting of gold or the like; but if clothes or other commodities were lent, four times the value, or other multiple *of its*, as declared by *the law*, must be understood. Accordingly VRĪHASPATI says generally, “ when interest ceases.”

“ WHEN interest has ceased” (CCLVI); when interest has stopped; if he do not then pay: the text must be so supplied. In that case “ the creditor may again exact interest;” making the former debt together with interest his present principal, he may stipulate interest afresh: and this is the wheel-interest mentioned by VRĪHASPATI. Such wheel-interest is of three kinds, as declared by MENU.

## CCLVII.

MENU: — HE, who cannot pay the debt *at the fixed time*, and wishes to renew the contract, may renew it in writing, *with the creditor's assent*, if he pay *all the interest then due*;

2. But if, by some *unavoidable accident*, he cannot pay the whole interest, he may insert *as principal* in the renewed contract so much of the interest accrued as he ought to pay.

“ THEN due;” the interest legally due to the creditor: paying the whole or a part of that, he may renew the contract or writing; that is, tearing the former



former writing, he may execute a new bond. If the whole interest be paid, fresh interest on the original debt only is stipulated : this is one form of wheel-interest ; and in this case the expression “ he, who cannot pay the debt ” signifies one, who is only unable to pay the principal. If a part of the interest be paid, interest may be stipulated afresh on the principal of the debt together with part of the interest accrued : this is another form of wheel-interest ; and in this case the expression quoted signifies one, who is unable to pay the original debt and a part of the interest. But, if he do not pay “ the interest then due ” (for the phrase is connected with the preceding terms), that is, if he pay no part of the interest, he must renew the debt for the sum then due as a new principal ; *in other words*, he must acknowledge it a fresh debt, that is admit the interest as a debt ; and acknowledging it a new debt, it follows of course, that interest shall again accrue. Or connecting the phrase with preceding terms, the construction may be thus ; ‘ if he do not pay the amount of interest, he must renew the contract .’ consequently *he must renew the written contract, inserting as a new principal the original debt with interest*. In this case the expression quoted signifies one, who is unable to pay the original debt and the whole of the interest ; or that may be the sense in all these cases.

“ So much of the interest accrued as he ought to pay ; ” this is purposely mentioned to remove the doubt, how he should pay the interest ; whether he may pay any part which is forthcoming, or must pay the whole interest at once. In the preceding text, “ if he pay the interest then due,” it is supposed, that he pays the whole interest ; for no distinction is expressed. Consequently two cases only are fully declared : and by the last phrase, explained “ so much of the interest as may happen to be due,” it is intimated, that, after paying some part of the interest, he should renew the contract, inserting as principal the original debt with *the remaining* part of the interest. Such is the notion entertained by CULLU‘CABHATTA. Three cases therefore arise even on this exposition.

upon interest; for in this case there is no interest upon interest? It is answered, the word (*ariddh*) is in the fifth, not the sixth, case: consequently, after stipulated or legal interest, *further* interest, which was not promised when the debt was originally contracted, is wheel-interest, or *interest after interest*; there is no difficulty. Such is the interpretation approved by CHANDĒSWARA; for he says, 'the debtor may renew the contract with interest on the principal together with some part of the interest accrued, or on the principal alone.'

SOME explain the first text, "if he pay some part of the interest then due." Consequently, if some part of it be paid, or the whole be unpaid, wheel-interest may be stipulated. Two forms of it are therefore mentioned by MENU, not three; for a third is not specified. But when the whole interest has been paid, if the bond be then renewed, there is no wheel-interest, but a fresh debt by the voluntary act of the debtor. In that case interest is therefore legal in a moral view: but interest upon interest is immoral. Or that also may be deemed immoral, under the text of VRĪSHASPATI (XXXV 7).

BUT rigid interpreters thus expound the text: he, who cannot pay the whole debt, principal and interest, being unable to effect its full discharge, but able to pay some part of the interest, or the whole interest (that is, unable to pay a certain portion of the debt), must renew the contract in writing: he must stipulate interest afresh; else the renewal of the contract would be useless: and this has been expressly declared by CĀTYAYANA. How can that be, since there is not a new loan? Therefore does MENU declare, "he may insert *as principal* in the renewed contract the sum then due." That being the case, must a writing be executed, which contains a fallacy? For this cause does the legislator add, "if he cannot pay, *literally, not producing the sum*:" therefore, mentally paying the sum due, let him borrow it again. - If some assets be forthcoming, may, or may not, a part of the interest be paid therewith? On this point the sage adds, "he has a right to pay as much of the interest as is possible."\*

\* According to the literal sense of the text, but it has been otherwise translated on the authority of commentators.

## CCLVIII.

MENU:—A LENDER at interest on *the risk of safe carriage* (*chacravṛiddhi*), who has agreed on the place and time, shall not receive such interest, if *by accident* the goods are not carried to the place, or within the time.

“ Who has agreed on the place and time,” is thus expounded on the authority of CHANDEŚWARA: the debtor says, “ I will pay the debt at such a place and at such a time ;” and the creditor assents to that proposal. Such a creditor is a lender at wheel-interest, having bargained for interest of that description. If he pass that place and time; if he do not go to that place at that time, the creditor shall not receive such interest, namely wheel-interest: of course he must receive back the sum lent without interest. Hence, even should interest prescribed by the law be stipulated for a certain time and place, it shall not be received by the creditor, if he do not attend at that place and time: for that small omission annuls legal interest.

BUT CULLŪCABHATTA expounds the text otherwise: the term “ wheel ” denotes the use of a wheel carriage or the like. A lender, who has accepted that by way of interest, and has agreed on the place and time; for instance, *he has agreed, that* “ a journey to *Vārāṇasī*, or the use of the carriage for a year, shall be the only interest:” in such a case, if the debtor fail in time and place, if he do not carry *goods* to *Vārāṇasī*, or do not carry *goods* during the year, he shall not receive the benefit, that is, the whole hire of the carriage. Consequently the whole interest is undischarged.\*

## CCLIX.

VRIHASPATI:—As the original debt together with *the arrear* of interest becomes a *new* principal, when wheel-interest is received after the debt is doubled, so does the use of a pledge *forborne* become a *new* principal in a similar case.

WHEN wheel-interest is received after the debt is doubled, as in that case the original debt with interest becomes a new principal,

\* The translation, which I quote unaltered, varies from both comments (MENU; Chapter 8, v. 156.)

so does the use of a pledge also become a new principal in a certain case; that is, even the use and profit of a pledge bear interest. For example; a man borrows money, pledging a cow on these terms; "this cow shall be milked by you, so long as I do not discharge the debt;" or, "this cow shall be milked by you during fifty months;" or, "she shall be milked to make good the interest of the debt." In this case, should the cow accidentally die notwithstanding the utmost care, or be stolen by thieves or the like; then, if the debtor do not give a fresh pledge, the value of usufruct and the principal sum must be paid at the time of discharging the debt. But, if the debtor cannot do so, then, being sued before the king or before a publick assembly, or attending the creditor of his own accord, he executes a new writing in the form of wheel-interest. In that case he may execute a bond after paying the value of usufruct; should even that exceed his means, he may add the principal sum to that value, and, inserting as principal the accumulated sum, execute a new deed, in which stipulated interest and the like, or legal interest at the rate of an eightieth part and so forth, may be established by consent of both parties; and he may cancel the former note.

HERE an observation should be made. When a debt was contracted on these terms, "let this cow be milked until the debt be discharged," but *afterwards*, the cow being accidentally lost, wheel-interest is stipulated by the debtor, whom the creditor has arrested, it must not be said, that, *in such a case* the value of the use *lost* before the renewal of the contract should be inserted therein, and the interest subsequent to it must follow the rate of profit from the use *of the cow*. On the contrary, any other rate, which may be settled, such as an eightieth part or the like, shall regulate the interest; for, in fact, it becomes a new debt.

#### CCLX.

VRĪHASPATI:—THIS rule concerns an acknowledged debt; but he, who contests the demand, shall be compelled to pay on proof in court by written evidence or oral testimony.

THIS rule, already propounded, for the recovery of a debt by expostulation and

and other modes, concerns an acknowledged debt, or one which is ascertained to be due. But, if the debtor contest the demand, if he deny the debt, saying "I owe not the sum," he shall be compelled to pay it, when the debt has been proved by written evidence or the like, he shall not be forced to pay it on the simple affirmation of the creditor. "Or by oral testimony," the particle is indeterminate, comprehending *verbal* contract and the like. For example, the creditor at some *former* time demanded payment of the debt from his debtor, he replied, "I will pay it at the end of a month," if any honest man know this fact, the debt may be thereby proved. So long as it be unproved, the creditor shall not use the means of recovery. If he do, VRĪHASPATI ordains a fine.

## CCLXI.

VRĪHASPATI:—WHEN the debtor appeals to judicature, or when the demand is unliquidated, he shall never be constrained by the mere act of the creditor; and he, who constrains a debtor thus exempted from such constraint, shall be fined according to law.

IF the demand be, for any reason, unliquidated or dubious, the debtor, who appeals to judicature, shall not be compelled or forced to pay. He, who constrains a debtor thus exempted from constraint or compulsion, shall be fined and the fine thus ordained must be understood in the case, where the creditor enforces payment by his own act, or through the king's officers. But, when that is done by the king, expiation must be performed, for none has mentioned a fine on *the king* himself.

WHO is considered as a debtor appealing to judicature? The same legislator replies to that question.

## CCLXII.

VRĪHASPATI:—A DEBTOR is considered as appealing to judicature, when he says, "I will pay whatever shall by law be declared to be due."

“WHEN he says,” a debtor, who says &c. A debtor appealing to judicature (*cryavādī*) pleads or claims (*vadati*) actual proof of a fact (*crya*), such as legal evidence and so forth

THE same lawgiver explains a demand unliquidated

### CCLXIII

VRĪHASPATI:—THE demand is considered as unliquidated, when a dispute arises between the two parties on the species lent, or its number, weight, or measure, *on the value of a pledge* or the like, on the amount of interest, or on *the question* whether the sum be, or be not, due.

“ON the species lent,” on the nature of the property lent, whether it be gold, silver, or other species For instance, it is ascertained, that the debt bears interest at the rate of an eightieth part or the like, and it is also admitted by the debtor, that he contracted the debt in such a month and year; but it is questioned, whether the species lent were gold or silver. So, “on its number, weight, or measure,” it is questioned, whether a hundred pieces, or eighty, were borrowed. Under the term “and the like” is comprehended slavery and so forth.

The *Retnācara*.

THE meaning is, when a slave has been pledged, it is questioned whether his service were assigned for one or two months. Under the term “and the like” are comprehended the questions, whether a pledge were assigned, or a surety given “On the amount of interest,” the doubt is, whether the loan bear interest or not, or whether the rate be an eightieth part of the principal. “On the question, whether the sum be, or be not, due,” for instance, the debtor questions whether he received the loan or not, whether he repaid it or not, in other words, whether it be due from him or not the verb (*da*, give) here signifies payment When a dispute or disagreement arises between the two parties, namely between the claimant and respondent, that debt, concerning which it arises, is a demand unliquidated The questions abovementioned are intended by the term dispute. Accordingly MENU  
(CCXXVIII)

(CCXXXIII) directs, that the king shall enforce payment of a debt proved by evidence to be justly demandable from the debtor. That text has been already expounded

BUT when a debtor denies a just debt, MENU declares, that the king shall enforce payment to the creditor of what is proved by evidence, and exact a fine from the debtor

## CCLXIV

MENU —IN a suit for a debt, which the defendant denies, let him (*the king*) award payment to the creditor of what, by good evidence, he shall prove due, and exact a small fine, *according to the circumstances of the debtor.*

“ WHICH the defendant denies , ’ which he disowns

*The Retnacara*

IN a suit for a debt, which the debtor denies, affirming, that he owes him nothing

CULLUCABHATTA

CONSEQUENTLY the debtor who affirms that he owes nothing, the king shall compel to pay to the creditor what shall be proved due by oral testimony and so forth

THE king shall exact a small fine, because the defendant denied a just debt

*The Retnacara*

CULLUCABHATTA states ‘ according to the circumstances of the debtor ’ For instance, in a case of denial, the king shall exact, according to the circumstances of the man, a less fine than the full amercement of twice the amount of the debt which will be mentioned

VRĪHASPATI has directed a fine on the creditor who enforces payment of a debt not proved by evidence, ordaining that “ he who constrains a debtor

debtor exempted from such constraint, shall be fined according to law. What sort of fine should be imposed? MENU replies to that question

## CCLXV.

MENU —IN the double of that sum, which the defendant falsely denies, or on which the complainant falsely declares, shall those two men, wilfully offending against justice, be fined by the king.

THE defendant, who denies the debt, offending intentionally, or the claimant who prefers a false claim for so much money, shall be fined in twice the amount contested, because these two men, the debtor and creditor, offend against justice.

*The Retnacara.*

A QUESTION here occurs for discussion the expression used by VRĪHAS-PATI, ' he, who constrains &c ' signifies one who takes measures adapted to the recovery of the sum. The same is here signified by the expression, " that sum, on which the complainant falsely declares ;" for a false claim in these words, " pay my debt, which is due from thee," is a measure adapted to the recovery of the sum. Now, if a man only declares falsely on the sum, and does not proceed to the actual recovery of it, he shall be fined in double that sum, but, if he proceed to the utmost length, the amercement is no greater which is a disparity in the law. If this be alleged, the answer is, that the derivation of the term, " who constrains," suggests one, who takes measures adapted to the recovery of debts; it does not necessarily signify the utmost process. Hence VRĪHASPATI and MENU concur and whether or not a greater fine should be exacted if the false demand be enforced, may be discussed under the title of fines. But here another fine (that is a fine on the debtor) is incidentally propounded by MENU

THIS text, ordaining a fine equal to double the amount contested, must be understood of the case, where the debt is denied knowing it to be just or claimed knowing it to be false. Such is the opinion of CULLUCA-BHATTA.



YĀJNYAWALCYA:—SHOULD a debt, *which was* denied, be proved by evidence, the defendant must pay the sum and an equal fine to the king; and he, who prefers a false claim, must pay twice the sum, which he demanded.

“DENIED;” disowned; if the debtor affirm, “I owe it not.” Should that debt be proved or established by the evidence of witnesses or the like, he must pay a fine to the king equal to the debt contested. But, if a false claim be preferred, the claimant must pay a fine to the king equal to twice the sum, for which he sued.

THIS text of YĀJNYAWALCYA, prescribing a fine on the debtor equal to the amount of the debt, must be adduced when there is no intentional offence. There is not any inconsistency.

The *Retnācara*.

CONSEQUENTLY there is in fact no variance between CULLŪCABHATTA and the *Retnācara*; for the intentional offence can only be the conscious affirmation of a falsehood.

SOME hold, that, since the person, who shall receive the sum, is not mentioned in the text of MENU (literally translated, “those two men, wilfully offending against justice, shall be forced to pay a fine equal to double that sum”), the meaning of the precept, that the debtor shall be forced to pay twice the sum, is, that he shall pay the sum in question to the creditor, and a fine of the same amount to the king. Consequently a fine on the debtor, equal to twice the sum contested, is not ordained; the creditor alone shall pay a fine equal to double the sum contested, if he prefer a false claim: and this also coincides with the text of YĀJNYAWALCYA; for both direct, that in whatever case a fine equal to the debt shall be paid by the debtor, in a similar case twice the sum must be paid by the creditor.

THAT cannot be; for it is unreasonable to impose a double fine for an equal offence.

## CCLXVII.

CATYA'YANA:—ANY creditor, who harasses a debtor appealing to judicature, shall forfeit that claim and pay an equal fine.

It should not be argued from the coincidence of this text of CATYA'YANA cited in the *Mitācśharā*, that a fine equal to double the sum intends the forfeiture of the sum claimed and an equal fine. Were it so, the fine would not be double, since one of the constituent parts of *that multiple* would have no existence. The last hemistich in the text of YĀJNYAWALKYA must be understood as relating to the conscious exhibition of a false claim. Accordingly

## CCLXVIII.

YAMA declares:—IF a rich debtor, through dishonest perverseness, pay not his debt, the king shall compel him to discharge it, and may take from him twice the sum *as a fine*.

THEREFORE, exacting from the debtor twice the amount of the debt as a fine, the king shall compel him to pay it, namely the debt; for that must be supplied. But, if he begin by denying the debt, though conscious of owing it, and afterwards, being brought into court, acknowledge the debt before the writing or other evidence be produced, he shall only be fined in a sum equal to the debt; for half the fine in question is ordained when *the defendant* himself acknowledges the debt.

## CCLXIX.

VYĀSA:—AFTER denying the claim, should the party himself acknowledge the due, it is considered as a *tardy* acknowledgement, and the fine ordained is half of that, *which is imposed in the case of obstinate denial*.

Of that fine, which is imposed in the case of obstinate denial. By parity of reasoning, should he acknowledge it in court upon reflection, though previously unconscious of the debt, the fine shall be half the debt in question.

THIS

THIS text of YĀJNYAWALKYA, though not inserted in most copies under the title of loans, is inserted in this place, because it has been quoted by CHANDĒSWARA, and corresponds with texts of MENU and others.

## CCLXX.

VYĀSA:—THE claimant shall pay twice the sum, for which he preferred a false claim :

2. The rule shall be the same, in respect of either party who may be confuted, if a consideration be *especially* pleaded ; and likewise in respect of either party who may be cast, should a former decision be alleged.

“ A CONSIDERATION ,” a special cause.

The *Retnācara*.

THE following text explains a special cause.

## CCLXXI.

NĀREDA:—WHEN the defendant acknowledges the *receipt of the sum*, as declared by the plaintiff, but alleges a consideration, it is deemed a special plea (*pratyavaścanda*).

THE defendant, or debtor, acknowledges the receipt of *the sum*, but answers, “ it is true I received the money, but it was given by thee as a gratification for the accomplishment of thine own business. ” In this case also the rule is the same, either party being cast, whether he be claimant or defendant, shall be fined in twice the amount. For instance, at the close of the suit, if the gift of the sum as a gratification be proved, the claimant shall be fined in twice the amount, if the debt be proved, the debtor *shall be fined in the same amercement*. CĀTYĀYANA has explained *the plea of prior decision*.

## CCLXXII.

CĀTYĀYANA:—IF a man, though cast at law, revive the suit, he should be considered as one previously confuted,

and is called an appellant from a former decision (*práñ-nyáya*).

FOR instance ; a creditor, cast in a suit formerly instituted before one umpire, again declares before another judge, " this man is my debtor." That claimant should be answered by the defendant with this plea ; " he has been already cast by me : " and that plaintiff is called an appellant from decision, or one whose suit has been already decided. In that case, whoever is cast, shall be fined ; whether the claimant be cast, or the defendant, in consequence of the former decision appearing to be unjust, or on other grounds. " Likewise ; " that is, he shall be fined in double the sum.

### CCLXXIII.

MENU :—A DEBT being admitted by the defendant, he must pay five in the hundred, *as a fine to the king* ; but, if it be denied *and proved*, twice as much : this law was enacted by MENU.

THIS text is expounded by CULLUCABHATTA, CHANDÉSWARA and others, as relating to fines. Consequently, a debt being first disowned, but afterwards voluntarily admitted by the debtor, on his being merely brought into court, he must pay an amercement of five in the hundred, or a twentieth part of the debt. But if it be denied, and the debtor persist in disowning it even in court, and it be proved with much trouble by a writing or by the evidence of witnesses or the like, *he must pay twice as much, or ten in the hundred*. CULLUCABHATTA concurs in this exposition.

ON the subject of the first hemistich, NÁ'REDA propounds a law.

### CCLXXIV.

NÁ'REDA :—BUT, if a rich debtor, through dishonest perverseness, pay not his debt, the king may take only a twentieth part of the sum, *if circumstances be very favourable to the debtor, or if he acknowledge the debt in court*.

THAT sum, which a rich debtor withholds through dishonest perverseness, the king shall compel him to pay to his creditor, and may himself take, as a fine, a sum amounting to a twentieth part of the debt : and this must be understood, when the debtor voluntarily confesses the debt in court ; for it corresponds with the text of *MENÜ* ordaining five in the hundred.

AND this alternative in respect of moderate fines should be regulated by the qualities of the debtor, his class, and his circumstances.

The *Retndcarda*.

ON the subject of the last hemistich, *YĀ'JNYAWALCYA* propounds a rule.

### CCLXXV.

*YĀ'JNYAWALCYA* :—A DEBTOR shall be forced to pay to the king ten in the hundred of the sum proved against him ; and the creditor, having received the sum due, must pay five in the hundred *towards defraying the charges of judicature*.

THE sum being proved, the debtor shall be forced to pay ten in the hundred, as a fine to the king, making good that amercement out of his own funds. The very same gloss is delivered in the *Diṣṣaśāḍā* ; and this must be acknowledged as the opinion entertained by the author of the *Mitácṣarā*. It concerns the denial of a debt ; for it coincides with the text of *MENÜ*, “ if it be denied, twice as much ” (CCLXXIII).

THE last part of the text of *YĀ'JNYAWALCYA* conveys this sense ; the creditor also, having recovered his debt awarded by the king, must pay five in the hundred or a twentieth part to him, as wages, *or towards defraying the charges of judicature*.

A MAN, subject to amercement under these texts, shall be forced to pay double the debt, a sum equal to the debt, or ten in the hundred, the fine being mitigated according to the degree of virtue he possesses, or other circumstances

circumstances taken into consideration. This is declared. But if the debtor, coming into court, confesses the debt, he shall only be forced to pay half as much. This is also declared. Consequently a priest, a virtuous soldier or the like, and a very indigent debtor, must pay five in the hundred; but, if he persist in his denial even in court, ten in the hundred; for this conduct is supposed to be preceded by knowledge of the fact: but, if he were unconscious, half as much. In general, a rich soldier and the like shall be fined in a sum equal to the debt, or in half that amercement, according to circumstances as abovementioned, if he deny the debt through ignorance; but twice as much, if he were conscious of owing the sum.

ON this subject CHANDESWARA has said in his gloss on the last hemistich of the text (CCLXXIII), 'he shall be fined in twice as much as is the amount of the debt.' That is liable to objection; for it would be a vain repetition of the double sum mentioned in another text of MENU (CCLXV).<sup>\*</sup>

IN like manner should the various fines on the creditor, in the case of a false claim, be regulated according to class and so forth. NĀREDA mentions a distinction in respect of the servile class.

#### CCLXXVI.

NĀREDA: SHOULD the sons of twice-born men by women of the servile class advance false claims, let the king cause their tongues to be drawn forth and pierced with a sharp instrument.

As for the following opinion, we think, it appears inadmissible, because it is unauthorized by CHANDESWARA, VĀCHESPATI, SŪLATĀNI, COLUCCABHATTA, and BHAVADĒVA.

THE phrase in the text of YĀJNYAWALKYA (CCLXXV), which is explained "shall be forced to pay by the king," being adduced in reply to the question arising on the preceding text (CCLXXVIII),\* by whom shall

\* In the code of YĀJNYAWALKYA, the verse CCLXXVIII immediately precedes the verse CCLXAV (See YĀJNYAWALKYA, Ch. 2, v. 41 and 42).

performance of some indispensable duty, or during extreme illness, or while a creditor keeps him confined, should appropriate the wealth of his wife, he shall never, *while his distress lasts*, be compelled to restore it.

“ OR while a creditor keeps him confined, ’ while a creditor or other person becomes the occasion of his nourishment being suspended or the like

The *Dipacalica*.

FROM the mention of “ husband ’ in this text it follows, that the wealth of a woman, borrowed by any other person, must necessarily be repaid \*

THE twenty topics, comprised under the forensick title of loans and payment, have been thus briefly discussed

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\* SOME remarks on the subject of pledges, which were subjoined in this place I have transferred to the chapter on pledges

E N D O F T H E F I R S T V O L U M E